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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 330

**EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRA-
TION AND NATURALIZATION, PETITIONER**

VS.

JOSEPH GEORGE STRECKER

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED SEPTEMBER 7, 1938

CERTIORARI GRANTED OCTOBER 17, 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 330

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, PETITIONER

vs.

JOSEPH GEORGE STRECKER

WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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A. [Caption omitted.]

1 IN UNITED STATES DISTRICT COURT, EASTERN
DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

No. 983 (Law)

UNITED STATES OF AMERICA, EX REL JOSEPH GEORGE STRECKER

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION
AND NATURALIZATION

Appearances: C. A. Stanfield, Esq., Hot Springs, Ark., Attorney for Joseph George Strecker, Appellant. Rene A. Viosca, Esq., U. S. Attorney, and Leon D. Hubert, Jr., Asst. U. S. Attorney, appearing on behalf of Eugene Kessler, District Director of Immigration & Naturalization, Appellee.

Appeal from the District Court of the United States for for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 21st day of September 1937, at the City of New Orleans, Louisiana.

Extensions of time granted by Honorable Wayne G. Borah, Trial Judge, bringing the return day up to and including the 17th day of December 1937.

2 In United States District Court

In the Matter of the Application of Joseph George Strecker for a Writ of Habeas Corpus

Petition for writ of habeas corpus

Filed June 16, 1937

To the Honorable JUDGE OF THE SAID COURT:

The petition of Joseph George Strecker of Hot Springs, in the County of Garland, State of Arkansas, respectfully represents:

I. That your prisoner is imprisoned, detained, and restrained of his liberty by one Eugene Kessler, District Director, New Orleans District, Immigration and Naturalization Service, United States Department of Labor, who now confines your petitioner in the city of New Orleans, Louisiana:

II. That the cause or pretense for such imprisonment and detention is that your petitioner is an alien now in the United States illegally and subject to deportation to Poland; that the sole authority for the detention of the petitioner is a warrant of arrest and one of deportation issued by the Secretary of Labor of the United States.

III. That warrant of arrest and warrant of deportation are void because: 1. The alien has not been accorded a fair hearing by the Labor Department. 2. The Labor Department has not correctly construed the immigration laws and rules. 3. There is no evidence in the record of the Labor Department to sustain the finding contained in the warrant of deportation. 4. Petitioner is not an immigrant from or citizen of the Republic of Poland. 5. Petitioner has been denied due process of law.

IV. Wherefore, your petitioner prays that a writ of habeas corpus may be granted and issued, directed to the said Eugene Kessler, commanding him to produce the body of petitioner before your Honor at a time and place therein to be specified, then and there to receive and do what your Honor shall order concerning the detention and restraint of your petitioner; and that your petitioner be restored to his liberty.

(Signed) JOSEPH GEORGE STRECKER,

(Signed) C. A. STANFIELD,

Attorney for Petitioner.

4 Dated June 16th, 1937.

[Duly sworn to by Joseph G. Strecker; jurat omitted in printing.]

4

Order

Let a writ of habeas corpus issue as herein prayed for returnable on Monday, June 21, 1937, at 10:30 o'clock A. M.

(Signed) RUFUS E. FOSTER,

Judge.

JUNE 16, 1937.

In United States District Court

Answer

Filed June 31, 1937

To the Honorable the JUDGE OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA:

Now into Court, through undersigned counsel, comes Eugene Kessler, District Director, New Orleans District, Immigration & Naturalization Service, made respondent in this matter, and for answer to the petition of the relator says:

1. Respondent admits the allegations of Paragraph 1 of relator's petition.

2. Respondent admits that his authority for the detention of the relator is a warrant of deportation issued by the Secretary of Labor for the United States of America, and respondent denies further allegations of paragraph 2 of the petition.

3. Respondent denies the allegations of paragraph 3. Further answering respondent says:

I

The relator, Joseph George Strecker, was born in Kamionka, Strumilowa #12, Republic of Poland on August 28, 1888, and has always been and is now a citizen of the Republic of Poland; respondent alleges that relator has never been naturalized as a citizen of the United States.

II

On November 25, 1933, a warrant of arrest was issued by the Secretary of Labor against the relator directing that he be taken into custody and given a hearing to enable him to show cause why he should not be deported in conformity with law.

III

Acting upon this warrant of arrest the relator was taken into custody and on January 23, 1934, and May 8, 1934, he was given hearings by immigration inspectors in accordance with law; at both hearings relator was represented by counsel and given an ample opportunity to present whatever defense he saw fit and to produce whatever evidence he saw fit.

IV

On the basis of the hearings above referred to, complete reports of which were forwarded to the Secretary of Labor, an order of deportation was issued on August 14, 1934, by the Secretary of Labor directing that the relator be deported to Poland for the reasons set forth in said order of deportation which will be produced at the time of the trial of this writ.

V

The order of deportation above referred to is based upon substantial evidence taken at the hearings above referred to, which evidence was sufficient in law to support the findings of fact made by the Secretary of Labor.

VI

On October 22, 1936, relator was recognized by the Republic of Poland as a citizen of Poland and on the same date a passport was issued by the Polish Consul General at Chicago to the relator.

VII

Respondent further alleges that relator is an alien who believes in, advises, advocates, and teaches, and who is a member of and affiliated with an organization that believes in, advises, advocates, and teaches

the overthrow by force and violence of the Government of the United States.

VIII

Respondent further alleges that on June 25, 1936, relator filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Arkansas, Western Division, in the matter entitled "In the Matter of the application of Joseph George Strecker for a Writ of Habeas Corpus," No. 8183, and that on

October 13, 1936, a full hearing was had on this matter before the Honorable Judge John E. Martineau, United States District Judge for the Eastern District of Arkansas, who took the matter under advisement, and on January 28, 1937, denied the petition for a writ of habeas corpus and dismissed the case; respondent further shows that relator failed to perfect an appeal taken from the judgment of Judge Martineau and on May 17, 1937, the matter was docketed and dismissed in the Circuit Court of Appeals for the Eighth Circuit, and the mandate dismissing the appeal was recorded in the United States District Court for the Eastern District of Arkansas on May 17, 1937.

IX

Respondent alleges that the instant proceeding is identical with the habeas corpus proceeding in the Eastern District of Arkansas; that no new facts are presented; that no new points of law are raised; and therefore, respondent believes and so alleges that the application for a writ of habeas corpus in the instant matter is made for the sole purpose of delaying the order of deportation issued in this matter almost three years ago.

Wherefore the premises considered, respondent prays that the application for a writ of habeas corpus in this matter be denied and that the case be dismissed.

And for all general and equitable relief.

(Signed) LEON D. HUBERT, Jr.,
Assistant United States Attorney.

AFFIDAVIT

[Duly sworn to by Leon D. Hubert, Jr.; jurat omitted in printing.]

8

In United States District Court

Agreed statements of facts

The Relator, Joseph George Strecker, is a citizen and native born subject of Austria. In 1912 he legally entered the United States as an alien immigrant from Austria. In 1933 he filed a petition for naturalization as a citizen, but before completing the necessary steps, this proceeding was begun against him.

On November 25, 1933, the Department of Labor issued a warrant of arrest for the relator and ordered that he be given a hearing to show cause why he should not be deported. This warrant of arrest is Government Exhibit I. Pursuant to this order of arrest, the relator was given a hearing in Hot Springs, Arkansas, on January 23, 1934, at which time he was represented by counsel. The record of this hearing is Exhibit II. At this hearing there was introduced in evidence by the Department of Labor a statement made by the relator to Carroll D. Paul, Immigration Officer on October 25, 1933.

This statement is Exhibit III. There was also introduced in evidence at this hearing Membership Book No. 2844 of the Communist Party of the United States of America (section of the Communist International) in the name of Joe Strecker. This book is Exhibit IV. There was also introduced in evidence a report of Walter L. Wolfe, Naturalization Officer. This statement is Exhibit V.

On May 8, 1934, the relator was given another hearing in Hot Springs, Arkansas, being represented by counsel, and at that time the Government offered in evidence certain extracts from a magazine entitled "The Communist," dated April 1934. These extracts are included herein as Exhibit VI.

At both the hearings of January 23, 1934, and May 8, 1934, the relator was represented by counsel and was permitted to cross examine witnesses and to introduce witnesses. The hearings were held in the office of relator's counsel in Hot Springs, Arkansas.

Based on the record of these hearings, the Secretary of Labor on August 14, 1934, issued a warrant of deportation against the relator. This is Exhibit VII.

On June 25, 1936, relator filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Arkansas. This petition was based on the same ground as the instant one. After hearing the evidence, the Honorable John E. Martineau, District Judge, on January 28, 1937, denied the petition for writ of habeas corpus, but allowed an appeal to his judgment. This appeal was never perfected and hence on May 13, 1937, it was docketed and dismissed in the United States Circuit Court for the Eighth Circuit.

The instant proceeding was begun on June 16, 1937. A hearing on this petition was held before the Honorable Wayne G. Borah on June 30, 1937. At that time the Government introduced all of the exhibits heretofore referred to.

The relator took the stand and testified as follows:

That Cecil Brock, a police officer of the Hot Springs Police Department, came to his home sometime in August 1933, without a warrant, and over his objections searched the home and took from his house the membership book (Exhibit III). Mr. I. H. Vincent and Mr. Carroll D. Paul, of the Department of Labor, testified that the aforesaid membership book had reached them through "Official

Channels" or department correspondence. There was no other evidence on the subject. The record of the Labor Department hearing does not indicate that objection was made at the hearing to the introduction of this card in evidence.

That on October 16, 1933, Cecil Brock, the Hot Springs Police Officer, again came to his home and required him to go to the office of one Mr. Emory, Arkansas District Prosecuting Attorney, where he met Mr. Wolfe, who, the witness said, informed witness that he was the Examiner to naturalize him.

That on October 25, 1933, a certain Captain L. A. Cooper, of the Hot Springs Police Department, and Mr. Carroll D. Paul came to his home and took him into custody; that he was taken to the jail and to a small room therein, and that there he was frightened and intimidated by the presence, threats, and cursing of the police officer, whom the witness stated had a reputation for viciousness and "Third degree" methods; that his answers to Mr. Paul's questions were incorrectly transcribed; that he was not advised that the statements he made to Paul were to be used against him; that he was taken immediately to the jail and examined without being afforded an opportunity to secure counsel; that the statements ascribed to him were inaccurate; that, "they (Mr. Wolf and Mr. Paul), wrote out what they wanted and made me sign like they wanted to."

11 That in November 1932 he saw a lady talking at a meeting in Hot Springs; that he just went in; that it was a Communist party meeting; that he was not then a member; that the speaker "was talking about how they raising prices, and people destroying corn, wheat, cattle by millions, and how they make the prices, and prices going too high; she said to educate, work for peace not for war, they want peace on this earth. She (the speaker) say: 'I am 100% Democrat.' That it what I thought, it is the same thing." That he put in sixty cents and she mailed him the membership book. That he was a paid member of the Communist Party from November 1932 to February 1933. That the Communist did not and that he did not advocate the overthrow of the government; that he believed in a democratic government; that he was not a member of the Communist Party in April 1934, nor at any time since February 1933. That he did not resign but simply did not pay more dues. That he had never heard of the "Communist," the magazine from which excerpts had been introduced at the hearing.

The Government then introduced Mr. CARROLL D. PAUL, the Immigration Officer, who took the statement of October 25, 1933, who testified as follows:

That the alien was not frightened or intimidated; that the statements were written by him in longhand at the time they were given and were correct; that he might have edited the alien's statements to correct the grammar, transposition, or something of that sort, but it was otherwise transcribed as made; that he did not advise the alien of his right to counsel at that time; that the examination

was a preliminary one and that the alien was not in custody; that he and the policeman carried the alien with his consent to the jail in the policeman's automobile; that there was no warrant of arrest and that he did not consider that the man was in custody; that the statements were given without threats, without intimidation, and without any show of force or any promises.

The Government Exhibits introduced here constitute the record on which the order of deportation is based.

After hearing all the evidence and the arguments of counsel, the Honorable Wayne G. Borah denied the application for a writ of habeas corpus.

(Sgd.) C. A. STANFORD,
*Counsel for Relator,
Joseph George Strecker.*

(Sgd.) LEON D. HUBERT, JR.,
Assistant U. S. Attorney.

Exhibit I

Warrant—Arrest of Alien

Bureau of Immigration.
Form 8-A.

UNITED STATES OF AMERICA,
DEPARTMENT OF LABOR,
Washington.

2023/5257.

No. 55848/822.

To District Director of Immigration and Naturalization, Galveston, Texas, or to any Immigration Inspector in the Service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Joseph Strecker, alias Joe Strecker, who landed at the Port of New York, N. Y., on or about the 7th day of November 1912 has been found in the United States in violation of the immigration act of October 16th, 1918, as amended by the act of June 5, 1920, in that he believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; that he is a member of or affiliated with an organization, association, society, or group that believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; that he is a member of or affiliated with an organization, association, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States, and that he is in the United States in violation of Section 2

of the act approved October 16, 1918, as amended by the act approved June 5, 1920, in that after his entry into the United States he has been found to have become a member of one of the classes of aliens enumerated in Section 1 of such act, as amended to-wit: an alien who is a member of or affiliated with an organization, association, society, or group that believes in, advises, or teaches the overthrow by force and violence of the Government of the United States.

I, W. W. Husband, Second Assistant Secretary of Labor by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1934." Pending further proceedings the alien may be released from custody under bond in the sum of \$1,000.00:

14 For so doing this shall be your sufficient warrant.

Witness my hand and seal this 25th day of November, 1933.

[SEAL.]

(Signed) W. W. HUSBAND,

Second Assistant Secretary of Labor.

Exhibit 2, being record of hearing before Isaac H. Vincent, immigration inspector, held on January 23, 1934, at Hot Springs, Ark.

UNITED STATES DEPARTMENT OF LABOR,
IMMIGRATION AND NATURALIZATION SERVICE,
New Orleans, Louisiana.

New Orleans File 34009/62.

In the matter of:

Name: Joseph George Strecker.

Alias: Joe Strecker.

Age: 45 years. Sex: Male.

Nationality: Poland.

Race: German.

Record of Hearing. Under Department Warrant of Arrest No. 55848/822, dated November 25, 1933.

Present for the Government: Isaac H. Vincent, Imm. Inspector.

Present for the alien: Felix L. Smith, Attorney for alien. Hearing held at Hot Springs, Arkansas, Jan. 23, 1934.

15 Stenographer: Inspector Isaac H. Vincent. Interpreter: English spoken.

Result of Medical Examination: None. Alien released on \$1,000.00 bond.

Verification of landing: None.

Last foreign address: Kamionka Strumilowa No. 12, Poland.

U. S. Address: 213 Magnolia St., Hot Springs, Arkansas.

Relatives in the United States: None.

Passport Status: None.

Description: Height 5' 8"; weight 150 lbs.; eyes brown; hair brown; face oval; nose large; mouth average; descriptive marks: right middle finger injured.

Property and effects: Four-room house 213 Magnolia St., household goods; sixty acres timber land, Montgomery County, Arkansas; mortgages on property amounting to about \$2,000; one trunk and two grips.

Foreign address to which deportable: Poland.

Hearing held at office of Attorney Felix L. Smith, 301½ Central Avenue, Hot Springs, Arkansas, Jan. 23, 1934.

By Inspector ISAAC H. VINCENT:

Alien, being first duly sworn, testifies, in English, as follows:

Q. What is your correct name?

A. Joseph George Strecker.

Q. Have you ever been known by any other name?

A. No other.

16 Q. Where were you residing at the time of your apprehension and arrest?

A. 213 Magnolia Street, Hot Springs, Arkansas.

(Note: Alien apprehended by Inspector Isaac H. Vincent.)

Q. What is the date of your birth and where were you born?

A. I am 45 years old; I was born at Mamionka, Strumilowa No. 12, Poland. I was born August 28, 1888.

Q. Of what country are you now a citizen and of what race are you?

A. Citizen of Poland, of the German race.

Q. I will now show, serve upon you, and read to you Department warrant of arrest No. 55848/822, dated Nov. 25, 1933, wherein it is charged "you have been found in the United States in violation of the Immigration Act of October 16, 1918, as amended by the Act of June 5, 1920, in that you believe in, advise, advocate, or teach the overthrow by force or violence of the Government of the United States; that you are a member of or affiliated with an organization, association, society, or group that believe in, advise, advocate or teach the overthrow by force or violence of the Government of the United States; that you are a member of or affiliated with an organization, association, society, or group that writes circulars, distributes, circulates, prints, publishes, or displays or causes to be written, circulated, distributed, printed, published or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue or display, written or printed matter advising, advocating or teaching the overthrow by force or violence of the Government of the United States; and that you are in the United States in violation of Section 2 of the Act approved October 16, 1918, as amended by the Act approved June 5, 1920, in that after your entry into the United States you have been found to have become a member of one of the classes of aliens enumerated

17 in Sec. 1 of such Act, as amended, to-wit: an alien who is a member of or affiliated with an organization, association, society or

group that believes in, advises or teaches the overthrow by force or violence of the Government of the United States." This hearing is granted you in order that you may show cause, if any there be, why you should not be deported from the United States. Under the law you have the right to services of counsel or a lawyer, at your own expense, to represent you at this hearing. Do you understand the charges in the warrant, and your right to representation?

A. Yes.

Q. Will you secure the services of a lawyer in these proceedings?

A. Yes; Mr. Felix L. Smith, of Hot Springs, is my lawyer; he is present.

Q. The warrant for your arrest provides for your release from custody pending the final determination of your case by the Secretary of Labor, Washington, D. C., upon furnishing bond in the sum of \$1,000.00. Do you understand, and are you prepared to furnish bond?

A. Yes; I will furnish bond in the sum of \$1,000.00.

Q. What is your occupation?

A. I am now renting rooms in my house. I used to be a restaurant keeper.

Q. Have you been arrested or convicted of a crime or misdemeanor involving moral turpitude at any time?

A. No, sir; never in my life.

Q. Give me the dates of your last and previous entries into the United States?

A. I entered the United States November 7, 1912, on the S. S. "Bremen"; that is the only entry I have ever made to the United States.

Q. Have you resided in the United States since that time?

A. Yes.

Q. I hand you transcript of your sworn statement made before Immigrant Inspector Carroll D. Paul, dated October 25, 1933, taken at Hot Springs, Arkansas, which will be read to you by your attorney.
(Statement read to alien by attorney.)

18 Q. I would ask you to let me know if this statement is true and correct, and, if not, in what way it differs from the statement you made?

A. The answers as transcribed were not as given by me. They never put any answers in as I told him, and I could not stop him. I was excited and intimidated. He looked at me hard and hammered on the desk. He was mad and made me mad. I can't remember in detail just what my answers were, but they are not what my attorney has read to me.

Q. You are advised that this record is incorporated into and made a part of the record of hearing in your case, being marked for identification "Exhibit A," and together with the evidence adduced at this hearing, will be forwarded to the Secretary of Labor, Washington, D. C., for consideration in the disposition of your case.

A. I understand.

Q. I also show you statement taken by Walter L. Wolf, Acting District Director, St. Louis, Missouri, at Hot Springs, Arkansas, September 16, 1933, and ask you if the statement that will be read to you is correctly transcribed?

(Statement read to alien by his attorney, Felix L. Smith.)

A. Some of the things that I answered on this occasion are not in this record. As to the "Daily Worker" I said I read it sometimes.

Q. You are advised that this statement will also be incorporated into this record for the consideration of the Secretary of Labor, Washington, D. C., in connection with the testimony taken at the present time, and will be marked for identification "Exhibit B"; do you understand?

A. Yes.

Q. What books of Karl Marx have you read?

A. No. 1 and No. 2 books.

Q. Have they a title?

19 A. I don't know whether they had a title—just two books by Karl Marx.

Q. Have you these books?

A. No, I disposed of them.

Q. When did you dispose of these two books?

A. In 1920, some fellow sold them to me for about \$7.50. About six months later I sold them to a different party at a profit.

Q. Did you read these books?

A. Yes, most of them.

Q. What did Karl Marx advocate in these books?

A. He was opposed to the owning of property. He believed in the Government owning everything.

Q. Did you accept his teaching at that time?

A. No, because there was too much prosperity here at that time.

Q. Do you believe in his teachings at the present time?

A. No.

Q. I show you a book issued by the Communist Party of the United States. The first page of the book reads:

Communist Party of the U. S. A.

(Section of the Communist International)

Membership Book No. 2844 for Name Joe Strecker. Date Admitted to Communist Party 11/15/32. Entered Revolutionary Movement ----- District 10 City Hot Springs, Ark. Section ----- Shop or Street Nucleus ----- Signature of Member (in ink) ----- This book issued on Jan. 3, 1933. K. Erlich. Signature of District Organizer and Party Seal.

20 No Party Membership Book Valid Unless it Has Party Seal Stamped On.

Issued by the Central Committee, C. P. U. S. A.

Q. Are you the Joe Strecker named in this book.

A. Yes.

Q. You are advised that this membership book in the Communist Party of the United States will be introduced into this evidence and marked, for identification, "Exhibit B B." Do you understand?

A. Yes.

Q. Is this book yours?

A. Yes.

Q. Are you a member of the Communist Party?

A. I was.

Q. What association fee did you pay to join the Communist Party?

A. I think 20 cents for the book, and after that I bought 60 cents in stamps.

Q. When you joined the Communist Party, did you go through any ceremony, or take any oath of allegiance to the order?

A. No, they just asked my name.

Q. Where did you join the Communist Party?

A. Here in Hot Springs. I think it was one day before the presidential election of 1932.

Q. Was the meeting held by the Communists in Hot Springs?

A. Yes.

Q. Where was that meeting held?

A. In a negro church on Grand Avenue.

Q. How did you know that a meeting would be held there?

A. I met a fellow on Cress Street, and he told me that a meeting would be held.

Q. Were you discussing Communism with him?

21 A. No; I said, what kind of meeting and he said "Come and see" and I went. I didn't think it would be a Communist meeting because it was held in a church, and the Communists don't believe in church.

Q. At this meeting how many speakers were there?

A. A woman and two men.

Q. In the speeches made at this time did any of the speakers advocate the overthrow of the Government of the United States and the establishment of a workingman's government?

A. No.

Q. What did they advocate?

A. They advocated the organization of a Communist Party so everybody could have bread and butter. They were against bosses—our bosses get all the gravy, and we don't get any of it. One of the speakers was a negro. The negro said the milk of a negro woman's breast was good for a white child to feed on.

Q. Now, you appear to read a great deal, did you know what the Communist Party stood for at that time?

A. I did not exactly know.

Q. Have you found out since?

A. I didn't know exactly at that time, but I think in 1932 I found out.

Q. Do you believe in the ownership of property by individuals?

A. Yes, sure.

Q. Do you believe in the overthrow of the Government of the United States and the establishment of a workingman's government?

A. I don't believe in the overthrow of the Government of the United States; I don't believe in the establishment of a workingman's government from a Communist standpoint.

Q. Is it not a fact that you have talked communism in Hot Springs, Arkansas?

A. No.

22 Q. Is it not a fact that you distributed or caused to be distributed anarchistic literature as testified by Mrs. Levering?

A. I was given a handful of circulars from that meeting, not more than twenty. I came home and put them on a table; the circulars stood for Communism. That was on November 4th. Mrs. Levering may have taken some. She asked me what they were; I didn't tell her; I told her it was some political things; I never told her to distribute them.

Q. Now, you receive the "Daily Worker," do you not?

A. It came to me a while, and then quit.

Q. How did it happen that you received that paper?

A. John Greenock, a roomer at my house in 1932, owed me \$10.00 room rent. He left my house to go to Pittsburg, and then sent me the paper and told me to read the paper, that I was a bourgeoisie. He meant that I owned property. I didn't subscribe to the paper; it came to me for ten months, and I read it sometimes. He said the paper was in place of the room rent he owed me.

Q. Just what do you believe in, in the way of Government?

A. I believe it is best like we have here. We have a good constitution for the people, by the people. We have a lot of grafters, as you know, that should be gotten rid of.

Attorney SMITH:

Q. Where were you, Joe, in 1917 and 1918?

A. I think I was in Illinois.

Q. What were you doing at that time?

A. In the coal mines.

Q. Did you register for the United States army service in June 1917?

A. Yes, sir.

Q. Where?

A. Orient, Illinois.

Q. Were you ever asked to go to the United States Army?

23 A. I said I was willing. I had brothers and sisters on the other side, and they told me if they needed me they would call me.

Q. Did they ever call you?

A. No.

Q. During the war did you purchase any Liberty bonds or war saving stamps?

A. Yes.

- Q. Do you know the meaning of the word "anarchist"?
- A. Yes.
- Q. What is an anarchist?
- A. Anarchist means to destroy property, to kill you, butcher you up.
- Q. Do you believe in the principles of the anarchists?
- A. No.
- Q. Did you state on direct examination that you were opposed to any organized government?
- A. I am not opposed to any government.
- Q. Have you ever been opposed to organized governments?
- A. No.
- Q. Have you knowingly encouraged the destruction of governments?
- A. No.
- Q. Are you opposed to the United States Government?
- A. No.
- Q. Have you ever been opposed to it?
- A. No.
- Q. Have you ever knowingly joined any organization the purpose of which was to destroy governments?
- A. No.
- Q. Did you know when you went to the meeting on Grand Avenue that you were going to a Communist meeting?
- A. I didn't know until I went in the church, then they told me it was a communist meeting.
- Q. Did you receive this book while there on that night (Communist membership book previously mentioned in testimony)?
- 24 A. No; I just put in my name and they sent the book to me from Kansas City.
- Q. Have you read this book through?
- A. Yes; but I don't believe it now.
- Q. Did you pay an initiation fee of 50 cents to receive this book?
- A. I don't remember the money I paid.
- Q. Did you pay an initiation fee of 50 cents for this book and 10 cents weekly dues?
- A. I paid something for the book, and bought a few stamps to put in it.
- Q. Were you employed at that time?
- A. No; I was just in the rooming house, the same place I am now.
- Q. Did you agree with what the speakers said at that meeting?
- A. Some of it was all right, and some of it wasn't—not all of it.
- Q. Did you know at the time you paid your dues you were joining the Communist Party?
- A. Yes.
- Q. Did you pay your dues to join the Communist Party or learn the things they stood for?
- A. To see the book, because I never saw one in my life.

Q. Why did you quit paying the dues to this Communist Party?

A. Because when I saw it (the book) I didn't agree with it, and I quit paying dues.

Q. Did you know if you quit paying dues for a period of four weeks that you were dropped from the organization?

A. Yes.

Q. How did you know this?

A. Because I saw it in there.

Q. Did you quit paying dues in order to drop out of this organization?

A. Yes, sir.

Q. Why did you wish to discontinue being a member of the Communist Party?

25 A. I didn't like it.

Q. Have you ever knowingly circulated, or caused to be circulated, any printed matter, the purpose of which was to overthrow or destroy the Government of the United States?

A. No.

Q. Did you not receive some literature while attending the meeting on East Grand Avenue?

A. Yes.

Q. Did you know what that literature contained at the time you received it?

A. No.

Q. What did you do with that literature?

A. Put it in my pocketbook, took it home, and threw it on my desk.

Q. How long was this before the presidential election of 1932?

A. About a day before the election.

Q. Did you read this literature closely?

A. Yes.

Q. State if you remember what was contained in this printed matter?

A. Such as "Vote Communist on the November Plank."

Q. As you now remember it, was that all that was in this literature?

A. I think it was political like all the rest.

Q. After reaching your home that night, or at any time lately, did you make any effort to conceal or hide this literature?

A. No.

Q. Did you make any effort at any time to destroy this literature?

A. No.

Q. Did you ever at any time ask anyone else to distribute this literature for you?

A. No.

Q. Did you or did you not approach a filling station man in Hot Springs and ask him to distribute some of this literature?

26 A. No.

Q. Did you or did you not ask Florence Levering to distribute this literature?

A. She told me she was going to take a few home.

Q. Have you ever had any literature of any kind in your home or in your possession that you expected to distribute, which literature sought the destruction of the United States Government?

A. No.

Q. Have you ever seen any literature at any time, or had in your possession, that advocated or taught the killing of United States Government officials or the officials of any other organized government?

A. No.

Q. Do you believe in the killing of United States Government officials simply because they are United States Government officials?

A. No.

Q. Have you ever had any literature in your possession that taught or that advocated sabotage?

A. No.

Q. Do you know what sabotage means?

A. That means when the working man works for some bosses and they want high wages and they can't get these high wages, they destroy his property.

Q. And you have never believed and don't believe now in sabotage?

A. No.

Q. Have you ever had in your possession any literature that taught the unlawful destruction of property?

A. No.

Q. Did you in 1927 make an attack on some arresting officers who came to your place on East Grand Avenue, attacking them with a knife, or any other weapon.

A. No; I didn't.

Q. Have you ever cursed officials who came to serve a warrant on you?

A. No.

27. Q. Have you ever had any difficulty with the United States Government?

A. No, never.

Q. You are now a member of the Communist Party?

A. No.

Q. Have you ever knowingly given any money or anything of value, the purpose of which was to teach the doctrines of the Communist Party?

A. No, never.

Q. Is it not a fact that you have invested some of your money in Soviet stocks and bonds?

A. Yes, both.

Q. Did you make that investment because you believed in the principles of Soviet Russia, or for the commercial returns that you might receive on your money?

A. Because I wanted to invest my money and make a profit and sell it for speculation.

Q. Was it your intention when you made this investment to forward the cause of Soviet Russia?

A. No.

Q. In your heart are you in sympathy with the Soviet Republics of Russia?

A. No; these bonds paid good dividends. I have got now about \$300.00 made on this investment alright. I will keep it until July and maybe make \$600.00 on it. I was merely speculating.

Q. Your investment was not made from any sympathy with Russia?

A. No.

Q. How long would it take you to dispose of your property in the United States, according to your best judgment?

A. One year.

Q. From your information of the Communist Party, should you be allowed to remain in the United States, do you think now that you would ever subscribe to its principles again?

A. No.

Q. When you joined the Communist Party, did you join this organization through ignorance?

28 A. I joined to find out what it meant.

Q. Did you make any effort to conceal the book showing that you are a member of this party?

A. No.

Q. Did you ever subscribe for the "Daily Worker?"

A. No.

Q. Did you ask that it be sent to you?

A. No; that man subscribed for it.

Q. Do you spend your idle time reading that type of literature?

A. No.

Q. What other newspapers do you read?

A. New York Times, St. Louis Post, the Little Rock papers, magazines, current history.

FLORENCE LEVERING, witness called, sworn, testified:

Q. What is your name?

A. Florence Levering.

Q. Are you known by any other name?

A. Yes; I am known by the name of Florence Gardner.

Q. When and where were you born?

A. Tulsa, Oklahoma. I am part Indian—Cherokee. I was born Oct. 27, 1871.

Q. Are you married or single?

A. Single.

Q. Have you ever been married?

A. I have been married twice.

Q. What was your maiden name?

A. Florence Prohall. My first marriage name was Levering; my second marriage name was Gardner.

Q. Then you are Mrs. Florence Gardner?

A. No; I never carry that name, because I married that man and I found that he had another wife.

Q. Where do you reside?

A. I live on Kay Street; there is no number out there.

29 Q. What is your occupation?

A. Anything I can get to do. For the last couple of years I have been a seamstress.

Q. Are you acquainted with one Joseph Strecker who is now present (pointing to Joseph Strecker)?

A. I sure do.

Q. Did you work for him?

A. Yes.

Q. In what capacity?

A. I ran the restaurant at 105 East Grand Avenue, Hot Springs, Arkansas.

Q. What position did you hold in the restaurant?

A. I cooked and sold short orders; I just ran the place.

Q. Is that restaurant in operation now?

A. No, sir; it has not been for about two years.

Q. How long did you work for Mr. Strecker?

A. For quite a while; I don't remember exactly how long.

Q. At the time you did work for him, did he ever talk with you on the subject of Communism?

A. No, sir; not when I worked for him.

Q. Did you ever at any time hold a conversation with him on Communism?

A. In my house, yes; I suppose you would call it that. It was in regards to the country and how things was going.

Q. Mrs. Levering, do you know what Communism is?

A. I guess I do. There is plenty I don't know at all. It is a kind of organization to be to the effect to change the laws of our country.

Q. In changing the laws of our country, do you know whether the Communists propose to do so by using force or violence, or, in other words, by a revolution?

A. I think they do.

Q. Did Joseph Strecker tell you at any time he was a Communist?

A. Yes; it was no secret at all.

Q. Mrs. Levering, did you ever get into any kind of difficulty at Newport or Batesville, Arkansas?

30 A. I was never there in my life.

Q. Mrs. Levering, were you present at the restaurant of Joseph Strecker when the restaurant was raided by the prohibition and the local police officer?

A. Absolutely.

Q. Was Joseph Strecker also present?

A. Yes, sir.

Q. It has been alleged that Joseph Strecker attacked the police officer and Government official at that time with a knife, is that true?

A. No; not that I know of.

Q. Did you attack them with a knife?

A. No; if Joe Strecker ever drew a knife it was sometime when I wasn't there.

Q. Mrs. Levering, I will read you from a statement made by Dave E. Brown of Hot Springs, Arkansas, to Mr. Walter L. Wolf, Acting District Director of Naturalization of St. Louis. This statement was made at Hot Springs, Sept. 16, 1933.

"Q. Have you ever arrested this man Strecker; if so kindly tell me the circumstances?

"A. I arrested him sometime in the year 1927 at his restaurant, located at 105 East Grand Avenue, Hot Springs, on the charge of violation of the National Prohibition Act. The officer accompanying me to make the arrest was Will Lowe, deputy sheriff of Garland County. At the time we arrested him, he was very drunk, and became very abusive to Mr. Lowe and myself. He was armed with a butcher knife, which he tried to use upon Mr. Lowe and me. We had considerable difficulty in subduing him. He was very abusive of the Government of the United States, cursing the Government and using words substantially as follows: 'To hell with the Government of the United States and everybody connected with it.' The informant in this case was a negro who had made a purchase of liquor in Strecker's place; but in the trial before the Commissioner, 31 Strecker produced witnesses who swore that they were present at the time this negro came into Strecker's place, and that the negro had not bought the liquor." Is this true?

A. To my knowledge he never used a butcher knife in resisting arrest; if he did I wasn't present.

Q. Did you ever hear Joseph Strecker say that he thought the president of the United States or any other official of this Government should be assassinated?

A. No; I don't think I have heard him say anything like that, but I have heard him say they were all grafters. Sometimes he would lose money, and while he was mad he would say almost anything. You know, when a man is mad he will say most anything he don't mean.

Q. Did you ever hear Joe Strecker offer any suggestion as to what should be done to correct the conditions existing in this country?

A. I don't remember what he has said in regards to it.

Q. Did he ever advocate the correction of conditions by revolution?

A. He has talked in regards to that, that he thought there would be one before the country would be any better than it was.

Q. Did he ever make a statement that if a revolution came he would participate in the revolution?

A. Yes.

Q. Do you recall just what he said in that regard?

A. I don't remember just what he would say. Different times he would talk in different ways, and it would be hard to explain.

Q. Mrs. Levering, what would you say as to Joseph Strecker's reputation in a general way?

A. He used to be pretty rough when he was drunk.

Q. Was he a law violator?

A. I don't know whether you would call it a law violator or not.

Q. When you say he was rough, do you mean that he used abusive language, or that he fought, or just what did he do?

32 A. I never knew him to fight anybody. He used abusive language when he was drunk.

Q. Do you know whether Joseph Strecker is now or was a member of the Communist party in the United States?

A. I don't know whether he belongs to it or not.

Q. Do you know whether he ever belonged to it?

A. I never seen any papers.

Q. Was a Communist meeting ever held at his restaurant?

A. No, sir.

By Attorney FELIX L. SMITH:

A. To refresh your mind a bit, Florence, you stated on direct examination that you didn't know exactly how long you worked for Joseph Strecker?

A. I believe it was about three years.

Q. I want to ask you, during what three years was it you worked for Joseph Strecker?

A. I just don't remember—it was about '26 or '27.

Q. Could you be exact as to these years?

A. No; I couldn't.

Q. About when was it?

A. It has been about four years ago since I quit working for him when he sold the restaurant.

Q. Then you would say it was in 1927, '28, or '29, would you not?

A. I suppose so; it has been about four years since he sold the restaurant, when I quit working for him.

Q. I don't want to embarrass you, Florence, but do you read and write?

A. No.

Q. Then all you know about Joe's business is what he told you?

A. What he has told me.

Q. But during the years you worked with Joe, I will ask you whether or not he did tell you most of his business?

A. Yes; he talked a great deal of it.

33 Q. During the time you worked for Joe, he never told you at any time about belonging to a Communist organization?

A. Never did, while I was working for him; no.

Q. During that three years did your granddaughter stay with you?

A. No, just part of the time; just about six months. She came in July, and Joe sold out the restaurant two or three weeks after Christmas.

Q. During that six months your granddaughter did most of your letter writing for you?

A. She did all of it.

Q. And during that six months, did that granddaughter have access to Joe's room and Joe's papers?

A. No, sir.

Q. Had there been any papers there of a communistic nature, would she have likely found them or read them?

A. There was no such papers there when he was at my house.

Q. I will ask you whether or not your granddaughter ever told you she found any literature there?

A. She never did.

Q. Were you present in the cafe on Grand Avenue—at 105 East Grand Avenue, when Dave Brown and Will Lowe raided Joe Strecker's house?

A. Yes.

Q. You positively know you were present when they raided the place?

A. Several times I was present when they raided it, and there were several times when I wasn't present when they raided it.

Q. How many times were you present whenever they raided it?

A. Am not certain; two or three times, though.

Q. But you are positive that you were present on two or three occasions when Dave Brown raided it?

A. Yes.

Q. Are you absolutely positive that he raided it more than two times?

34 A. All I know is what they told me. I was sick once, and they told me they raided the place when I was sick,

Q. What do you mean by "they"?

A. The officers. I don't just now remember what officers; anyhow Joe told me they raided him.

Q. Are you absolutely positive that on occasions when you were present, and they raided the place, that Joe Strecker made no attempt to cut the officers with a knife or do bodily harm?

A. No, sir; not that I see.

Q. Did Joe Strecker ever tell you he made an attack on them when you were not present?

A. No.

Q. Were you present on the occasion when Mr. Brown and Mr. Lowe raided the place, at which time Joe Strecker was drinking or drunk?

A. He might have been drinking; but not drunk, because when Joe got drunk he crawled off in a corner and stayed there until he slept it off.

Q. Do you recall any specific time in 1927 when these officers raided the place when Joe was unusually drunk?

A. No, because Joe was not unusually drunk when I was there. The particular time they claim he used the knife, that was one morning.

Q. Explain just what you mean?

A. It might have been in the afternoon; I can't say what time it was; it was too early for Joe to fill up. There was never nothing to the knife that I know anything about.

Q. At that time were you cutting bread or cutting meat?

A. Yes, I had a knife in my hand.

Q. Did you or did you not point that knife and tell the officers to sit down?

A. No, I told them not to come in the kitchen. I was there with the knife cutting bread, and I told them not to come into the kitchen because there was nothing in there. I told them not to search the place until I sent for Joe. Joe wasn't in the restaurant at that time.

35 Dave Brown walked to a chair near the kitchen and sat down as I told him.

Q. Did you point to Brown with the knife?

A. No.

Q. Was this the occasion when they attempted to search Joe Strecker?

A. Yes.

Q. Did you on that occasion tell them or order them not to search Joe?

A. No; that was when they wanted to search Joe for a marked dollar.

Q. When was that?

A. I guess that was the last time they arrested him; I couldn't say.

Q. Do you know who the officers were on that occasion?

A. Will Lowe and Dave Brown.

Q. Then on that occasion did you or did you not have a knife in your hand?

A. I was making hamburgers; I might have been cutting bread, but I never drew it on the officers.

Q. On this occasion did you tell them not to search Joe in the cafe?

A. Certainly did.

Q. Did they search him in the cafe?

A. No; they didn't.

Q. You don't recall whether on that occasion you had a knife cutting hamburgers or not, do you?

A. No.

Q. You were asked on direct examination if Joe ever told you he believed in Communism, to which question you answered, "It was no secret," is that right?

A. Correct.

Q. I will ask you to state the name of any party or parties that have on any occasion informed you that Joe Strecker believed in Communism?

A. You want me to state the names?

Q. Yes.

36 A. A good many people I know claims he is one; Charlie Juneau, for one; he is a grocery man who lives right across the street from 105 East Grand Avenue.

Q. Do you know the names of any other parties who told you Joe believed in Communism?

A. I don't know whether they said he believed in it, but they said he was always talking it to them. Well, Henry Ellis, he is a carpenter who lives on Grand Ave.

Q. I will ask you to state if you can the date they told you and the occasion?

A. I can't say; it was two or three weeks ago he had seen Joe up-town. He said Joe was talking to a fellow on that Communism.

Q. Do you know of any other party that ever told you Joe believed in Communism?

A. Well, most everybody in town thinks he is one.

Q. Can you name any other party that has told you Joe Strecker believes in Communism?

A. Not at the present time. It is hard to call to mind any person at this time.

Q. I will ask you if Charles Juneau has not been in business near where Joe Strecker was?

A. Yes; right across the street.

Q. I will also ask you if you know what the nationality of Charles Juneau is?

A. I don't know; they call him a dago, but I don't know whether he is or not.

Q. I will ask you whether or not you know that Charles Juneau and Joe Strecker differed on many political questions?

A. Yes.

Q. I will also ask you if it is not a fact that Charles Juneau was not in competition with Joe in some lines?

A. Yes.

Q. State whether or not you have heard Charles Juneau say he didn't like Joe Strecker.

A. I have heard him say he didn't like him plenty of times.

37 Q. Do you know where Henry Ellis was born?

A. In Hot Springs.

Q. What occupation does Mr. Ellis follow?

A. He is a carpenter.

Q. Did you ever hear him say whether or not he liked Joe Strecker?

A. No, he always claimed he liked Joe. He said he never had anything in particular against him.

Q. During the three years you worked for Mr. Strecker, did he tell you he believed in Communism?

A. No, not when I worked for him; no, I don't think there is ever a question of such a conversation when I worked for him.

Q. All that you know of Joe's being a Communist is from what someone else told you?

A. Only what he told me himself.

Q. How do you arrive at the answer, "It was no secret" he was a Communist?

A. Well, because he talked it to anybody.

Q. Did he talk it in the cafe?

A. Not when I worked for him and he had that cafe. It was all since he sold out the restaurant in the last year or two.

Q. How closely associated have you been with Joe Strecker?

A. I would say maybe once or twice a week, sometimes oftener than that, I slept with him.

Q. Where would you usually see Joe?

A. I usually went to his house on Sunday and cooked dinner for him.

Q. And you can only name two persons that told you he believed in Communism?

A. I have heard lots of people say he was, but as to remembering their names, I can't exactly recall just who they were; I couldn't mention their names now.

Q. When were you last in the home of Joe Strecker?

A. It was along about this time last year.

38 Q. Then during the past year your acquaintance with Joe Strecker has been seeing him on the street?

A. About three times in the last year, and then I saw him on the street.

Q. At these three meetings, what was the usual conversation?

A. We never even passed the time of the day. I have not talked with him. I usually seen him at a distance.

Q. Then what you know about Joe Strecker is belief?

A. Well, what he has not told me himself.

Q. Did you ever know of Joe Strecker being indicted for any crime?

A. No, if he was I didn't know it.

Q. Have you known of Joe Strecker's being arrested for any crime during the past three years?

A. No, sir.

Q. Is it not a fact that Joe Strecker seems to be leading a more sober life now than he was four years ago?

A. Yes; if he has taken a drink in four years but a couple of times, I don't know it.

Q. And on these occasions, he didn't get drunk, did he?

A. No, sir; he would take a little swallow of it and say, "I don't want it."

Q. So far as you know, Joe Strecker is well known in the town of Hot Springs, is he not?

A. Yes.

Q. How long have you lived here?

A. About thirty-five years.

Q. Is it not a fact that the reputation of Joe Strecker among most people is good?

A. It might be.

Q. Is it not a fact that Joe Strecker's reputation among the American people in Hot Springs is good?

A. I can't say, I never lived with him.

Q. You have worked for the man around the cafe, and you should know what his reputation is.

A. I rather think he has a good reputation.

39 Q. During the years that you were most closely associated with Joe Strecker, is it not a fact that Joe Strecker lent money to a lot of American citizens of Hot Springs?

A. He sure did.

Q. Is it not a fact that he was good in lending money to the people in need?

A. Yes; he was extraordinary good in that; and he would be very lenient in making them pay interest.

Q. And you know that from your own personal knowledge?

A. Yes; and there is one thing, if Joe owes you a dollar, Joe will pay his debts.

Q. Did you ever on any occasion know of Joe Strecker attacking any person, an officer or otherwise, with a knife or any deadly weapon?

A. Never in my life; nobody.

Q. Has his talk to you ever been that he believed in doing bodily harm or injury to any person?

A. No.

Q. I will ask you whether or not Joe Strecker in 1928 loyally advocated the election of Al. Smith for president?

A. I think he did; he was for Smith.

Q. I believe you stated you never knew of Joe Strecker belonging to any Communist organization?

A. No, sir; if he did I never know it.

Q. And I believe you stated he believed in bettering the laws of this country?

A. Yes.

Q. Did he advocate lawful means of making changes in the Government?

A. Well, I don't know.

Q. But it is a fact that during the present depression he has made a better citizen than he was before, in your opinion?

A. Well, I don't know. I think yes, in a way. Yes; he has quit his drinking, and he don't drink and associate with those old drunken associates.

40 Q. Did you ever hear on any of the occasions when Mr. Brown and Mr. Lowe raided the place on East Grand Avenue any such language used as Mr. Dave Brown stated was used by Joe Strecker?

A. No; Joe never abused the officer at any time.

Q. On any of these occasions, did you ever hear Joe Strecker curse officers or say "to hell with the United States Government?"

A. No.

Q. Had such language ever been used, would you likely heard it?

A. I think so; when I was there. Joe never abused them officers any time when I was there.

Q. Did you ever hear Joe Strecker say "to hell with the United States Government?"

A. Yes.

Q. Was he sober and in a good humor when he said it?

A. No; he was usually mad.

Q. You don't especially like or dislike Joe Strecker?

A. No; I don't dislike Joe.

Q. Do you get along with Joe as well now as you used to?

A. He stays on Magnolia Street, and I stay on Kay Avenue. I think I seen him on the street a week or two before Thanksgiving.

Inspector VINCENT:

Q. It has been alleged that Joe gave you certain pamphlets or circulars pertaining to the Communist Party to distribute around the city of Hot Springs, is that true?

A. Yes.

Q. Have you one of these circulars?

A. No.

Q. Do you know what was in the handbill or circular?

A. No.

Q. How do you know it was a Communistic bill?

A. Because my granddaughter read one of them and told me.

41 Q. When was that?

A. It was in the fall, before the presidential election. It might have been two or three months.

Q. What kind of bill was that handbill?

A. It was a plain sheet of paper. My daughter just told me it was soapbox literature.

Q. Did you distribute any of these handbills?

A. No, sir, I didn't.

Q. Did Joe ask you to distribute them?

A. Yes.

Q. What did he tell you?

A. He told me to be sure and put them bills out at night, and if I didn't want, then to get some negro boys to do it for me.

Q. What became of these handbills?

A. I burnt them up.

Attorney SMITH:

Q. Are you sure that was as much as three months before the presidential election?

A. It was in the fall before the presidential election. I was ailing, and I most forgot I was living.

Q. Do you know of any other political literature being distributed in Hot Springs?

A. If I did, I don't remember it.

Q. Did you have any knowledge at that time of a man named Foster running for President of the United States?

A. Yes, I heard a lot of people talk about him running for President of the United States.

Q. Have you heard the name of any other candidate that ran in that election?

A. No.

Q. To refresh your memory, didn't you tell me you had knowledge of another candidate running for president?

A. Well, there was two of them, but I never tried to keep their names in mind.

Q. Is it your opinion, then, that Foster was the Communist candidate for President?

A. Yes.

42 Q. Is it not a fact also, that you knew then, or have since learned, that there was another candidate on the Communist ticket for President?

A. There might have been; I think they told me there was two that was running. A colored fellow and a white fellow—I believe Ford was the name.

Q. Were you informed at that time what political party Ford represented in the race for President?

A. No.

Q. Did you not understand there was a negro running for President on the Communist ticket?

A. Yes.

Q. Did you know in that election whether Joe Strecker was supporting Foster or Ford?

A. Well, he talked about him all the time—a great deal.

Q. Did you know which of the two candidates he supported, if either?

A. No, I don't.

Q. Do you know whether or not in the Presidential election he supported any Communist for President?

A. No.

Q. Were you paid or offered anything to distribute the literature that has been mentioned?

A. No.

Q. You didn't read the literature?

A. No.

Q. You don't know what was printed on it?

A. No.

LOUIS BENEDICT called, sworn, testified:

By Attorney FELIX L. SMITH:

Q. What is your name?

A. Louis Benedict.

Q. Where do you live?

A. 919 Malvern Avenue, Hot Springs, Arkansas.

Q. You are a citizen, property holder, and voter of Hot Springs, are you not?

43 A. Yes, sir.

Q. How long have you lived in Hot Springs, Arkansas, Mr. Benedict?

A. Since 1888.

Q. Have you lived here continuously since 1888?

A. Practically so.

Q. What is your occupation?

A. Baker.

Q. Are you acquainted with Mr. Joe Strecker, who is present?

A. Yes, sir; since 1918.

Q. I will ask you to state whether or not you are acquainted with his reputation as a citizen of Hot Springs since that time?

A. Yes; in fact, all the time.

Q. Would you say that you are intimately acquainted with the man?

A. Yes, sir.

Q. I will ask you, Mr. Benedict, to state to the Inspector, what in your opinion is the general reputation of Joe Strecker as a law-abiding citizen of the city of Hot Springs since 1918?

A. His reputation is very good; in fact, he has a great many friends.

Q. I will ask you to state whether or not if you were a regular caller in the cafe of Joe Strecker during the time he was at East Grand Avenue?

A. I was. I furnished bakery goods.

Q. About how often did you call at his place of business at that time?

A. Twice every day.

Q. I will ask you to state if at any time that you called on Joe Strecker at his place of business, that the man ever indicated to you that he was interested or belonged or believed in the Communist theory?

A. He never did. I might say it was quite a surprise to me when I went with him to Little Rock to get his citizenship paper he was refused. In fact, I couldn't understand why.

44 Q. How often would you say you have seen Joe Strecker on an average, during the years you have known him?

A. Every day; you might make it most every day, because since I am out of business I have not seen him as regularly as when I was in business, and he was in business. On the streets I met him practically every day.

Q. I will also ask you to state from your knowledge and information of the man, if it is common knowledge Joe Strecker is known as a Communist?

A. No; nobody ever told me he was a Communist; nobody talked to me about it.

The following passport data was furnished:

Name: Joseph George Strecker.

Age: 45.

Date of Birth: August 28, 1888.

Place of Birth: Kamionka, Strumilowa No. 12, Poland.

Father's name and place of birth: Jacob Strecker, Kamionka, Strumilowa, Austria, dec'd.

Mother's name and place of birth: Dorothy Burgens, Radochow, Austria, deceased.

Names and addresses of relatives abroad: Son—Joseph Simon Strecker, Kamionka, Strumilowa No. 12, Poland.

Names and address of wife: Sofia Zinko, Kamionka, Strumilowa No. 12, Poland.

Names and locations of foreign schools attended: Public School, Kamionka, Strumilowa, Poland.

Names and locations of foreign churches attended: Catholic Church, Kamionka, Strumilowa, Poland.

Where baptized: Same place.

Date of Baptism: In infancy.

Personal description: Height 5' 8". Weight 150 lbs. Eyes brown. Hair brown. Face oval. Nose large. Mouth average. Distinctive marks: Right middle finger injured.

45

Inspector VINCENT to JOSEPH STRECKER:

Q. You are advised that under the Act approved October 16, 1918, as amended by the Act approved June 5, 1920, Section 3, that if you are deported from the United States, and thereafter you enter or attempt to enter the United States, you will be deemed guilty of a felony, and upon conviction be liable to imprisonment for a term of not more than five years, and upon termination of such imprisonment be taken into custody on warrant of deportation, as provided in the Immigration Act of June 5, 1920, do you understand?

A. Yes.

Summary

From the evidence adduced at this hearing, it appears that Joseph Strecker first entered the United States November 7, 1912, at New York, N. Y., ex S. S. "Bremen" and has remained in the United States since that time. It appears that about November 3, 1932, he became a member of the Communist Party, and accepted certain Communistic literature for distribution, at that time. His membership book is incorporated in the evidence, but not the circular that he caused to be distributed. On two former occasions he admitted to Government officers that he was a Communist, and believes in the Communist doctrines. At this hearing he admits that he has been a Communist, but denies being in or belonging to the order at the present time. It is believed that the charges in the warrant of arrest have been sustained by the evidence.

Recommendation

46 Deportation to Austria, the alien's native country, at the expense of the Immigration appropriation, "Salaries and Expenses, Immigration and Naturalization Service, 1934."

(Sgd.) ISAAC H. VINCENT,

Immigrant Inspector, Examining Officer.

I certify that the foregoing is a true and correct transcript of the record of hearing in this case.

(Sgd.) ISAAC H. VINCENT,

Stenographer.

Exhibit 3 being testimony of Joseph Strecker taken on October 25, 1933, in office of Chief of Police, Hot Springs, Ark., before Immigrant Inspector Carroll D. Paul.

Statement of Joseph Strecker alias Joe Strecker held at the office of the Chief of Police, Hot Springs, Ark., before Immigrant Inspector Carroll D. Paul, on October 25, 1933.

Present: Carroll D. Paul, Examining Officer and Secretary. L. A. Cooper, Capt. of Police, Hot Springs, Ark. Luther Morgan, Officer Police, Hot Springs, Ark. Examining Officer, addressing Joseph Strecker, alias Joe Strecker.

You are advised that I am an Inspector, United States Immigration and Naturalization Service and that I desire a statement from you relative to your right to be and remain in the United States; such statement, if made, must be entirely voluntary on your
47 part and may be used against you in any subsequent criminal or other proceedings.

Q. Are you ready and willing to make such a statement under oath?

A. Yes.

JOSEPH STRECKER alias JOE STRECKER, having been duly sworn, testified in the English language as follows:

Q. What is your name?

A. Joseph Strecker.

Q. Have you ever been known by any other name?

A. Yes; I am known here as Joe Strecker.

Q. What is your age and occupation?

A. I am 45 years of age and my latest occupation was restaurant operator.

Q. When and where were you born?

A. I was born on August 28, 1888, at Kamionka Strum, Province of Galicia, Austria.

Q. What is your race and nationality?

A. German race and Austrian nationality.

Q. Are you married or single?

A. I am married.

Q. When, where, and to whom are you married?

A. Some time in 1910, at Kamionka, Strum, Austria, to Sofia Zenko.

Q. Where is your wife at this time?

A. She is in Austria.

Q. Has she ever resided in the United States?

A. No.

Q. Have you any children?

A. I have one son, Joseph Strecker, born in Kamionka, Strum, Austria, in 1912.

Q. State your father's name and nationality?

A. Jacob Strecker, a citizen of Austria.

Q. Did he ever to your knowledge become naturalized as a citizen of any other country?

A. No.

48 Q. State your mother's maiden name and nationality?

A. Dorotea Burger, a citizen of Austria.

Q. Where were your parents born?

A. Both born in Austria.

Q. When and where did you last enter the United States?

A. On November 7, 1912, at New York, N. Y.

Q. What was your destination at that time?

A. I was enroute to the coal fields of Penna.

Q. What was your purpose in entering the United States?

A. To reside.

Q. Were you inspected and duly admitted to the United States by an Immigrant Inspector at that time?

A. Yes.

Q. Are you now in possession of a passport?

A. No.

Q. Do you have a birth certificate?

A. No.

Q. Have you ever been departed, excluded, or permitted to depart voluntarily from the United States in lieu of deportation by Immigration authorities?

A. No.

Q. Have you ever resided in the United States prior to your last entry?

A. No.

Q. Have you ever been arrested or convicted for the commission of a felony or other crime or misdemeanor?

A. I was arrested in 1926, charged with selling whiskey, but was not convicted, and I paid a fine of \$10.00 for having sexual relations with one Florence Gardner, and was arrested for selling cigarettes without tax stamp, but was not convicted on that charge.

Q. In your hearing before the Naturalization Examiner you stated that you had lived with a woman named Florence Gardner as your wife; will you state the period during which you lived with her?

A. Yes; from about 1926 to 1932.

49 Q. Was Florence Gardner a prostitute?

A. Not while I lived with her.

Q. Did you know that she was a prostitute prior to the time you commenced living with her, and that she practiced prostitution during a period of several years?

A. I had heard that.

Q. Are you living with a woman at this time?

A. No.

Q. Have you any relatives in the United States?

A. No.

Q. Do you own any property in the United States?

A. Yes.

Q. What does your property consist of and what is the approximate value of it?

A. A house located at 213 Magnolia St., Hot Springs, value about \$1,700.00; a farm 32 miles out from Hot Springs, value about \$300.00; a mortgage on another farm in the amount of \$1,000.00; and some stocks and bonds.

Q. Are you a member of any organization or society, social, fraternal, or political?

A. I was a member of the Communist Party of America.

Q. What do you mean, "you were a member of the Communist Party of America"?

A. Well, I haven't paid my dues since February 1933.

Q. Have you notified the organization that you were withdrawing from it?

A. No.

Q. Have you had a change of heart or mind in the matter, or have you simply failed to pay your dues?

A. Just failed to pay my dues.

Q. Then you still feel the same as you did at the time of your initiation?

A. Yes.

Q. Have you ever become a member of any organization without first acquainting yourself with its intents and purposes?

A. No.

50 Q. Is this your membership book in the Communist Party of the U. S.? (Presenting Membership book No. 2844 issued 11/15/32 to Joe Strecker.)

A. Yes.

Q. Were you at the time of your initiation into the Communist party familiar with its intents and purposes?

A. Yes.

Q. How did you acquire this prior knowledge of Communism?

A. From a study of the writings of Marx.

Q. How long have you studied the writings of Marx?

A. About 10 years.

Q. Are you in accord with Marx in regard to the social order of things?

A. Yes.

Q. Will you tell me what the aims and purposes of the Communist Party of America are?

A. Yes; it proposes to destroy capitalism and establish a Government by the people.

Q. Do you mean a Government similar to that now in existence in Russia?

A. Exactly.

Q. What means will the Communist Party of America use to attain its purpose?

A. I do not know what will be necessary.

Q. Will it resort to armed force in the event that should be necessary?

A. That is what they say.

Q. Who says that?

A. The leaders of Communism.

Q. Do you mean the local leaders, the national leaders, or those in Russia?

A. All of them.

Q. Do you think that the present form of Government in the United States should be destroyed and a Communistic or Russian form of Government establish in the United States?

A. I think that the destruction of capitalism is inevitable and that the sooner it comes the better off we shall all be.

51 Q. Would you personally bear arms against the present U. S. Government?

A. Not at this time.

Q. Why not at this time?

A. Because Communism is not strong enough now.

Q. Supposing that the majority of the populace of the United States were Communists, and were certain of a victory over Capitalism in an armed conflict, would you then personally bear arms against the present Government?

A. Certainly; I would be a fool to get myself killed fighting for Capitalism.

Q. Have you ever been in the military service of any country?

A. No.

Q. Have you done any work for the Communist Party since becoming a member?

A. All I have done was to hand out some papers.

Q. Where did you obtain these papers?

A. From the headquarters in Kansas City.

Q. What was the nature of this literature?

A. It was something calling upon the people to unite.

Q. To unite for what?

A. Against Capitalism.

Q. When you speak of Capitalism, do you mean the present Government of the United States?

A. It is all the same thing.

Q. Did you circulate this literature that was sent you?

A. I gave it to some other people to circulate.

Q. Will you name them?

A. I have forgotten who it was.

Q. What was your purpose in filing your petition for citizenship in the U. S.?

A. I thought I would have more protection if I was a citizen of the United States.

Q. Protection from what?

A. From the law.

52 Q. Do you mean that Section of the law which provides for the deportation of certain aliens?

A. I did not say that.

Q. Isn't it a fact that your party leader advised you not to become too active in that you might be subject to deportation from the United States?

A. Something like that.

Q. Is that the reason you stopped paying your dues?

A. No.

Q. In the event the Communist party of America attains sufficient power or proportion to be of service to you, will you pay up your back dues and go along with them?

A. Certainly.

Q. What is the name and address of your nearest relative in Austria?

A. My wife, Sofia Strecker, Kamionka Strum, Austria.

Q. Have you any further statement to make?

A. No.

I hereby certify that the foregoing is a true and correct transcript of the record of hearing in this case.

(Signed) CARROLL D. PAUL,
Examining Officer & Secretary.

File No. 584/309.

Exhibit marked "Govt. 4," being membership book in name of Joe Strecker of the Communist Party of the U. S. A.

Filed Jun. 21, 1937

Communist Party of the U. S. A.

(Section of the Communist International.)

Membership Book No. 2844 for

53 Name—Joe Strecker. Date Admitted to Communist Party—
11/15/32. Entered Revolutionary Movement— ----- Dis-
trict 10, City Hot Springs, Ark. Section ----- Shop or

Street Nucleus _____ Signature of Member (in ink) _____ This
Book was issued on Jan. 3, 1933 (Date).

(Signed) K. ERICH,

Signature of District Organizer and Party Seal.

(Initiation Stamp M. W.)

Stamped on Face in Purple Double Lined Circle: Workers of the
World United. District 40. K. C. MO. Communist Party U. S. A.
No Party Membership Book Valid Unless It Has Party Seal Stamped
On. Issued by the Central Committee, C. P. U. S. A. Extracts From
the Statutes of the Communist Party of the U. S. A.

§ 3—Membership

1. A member of the Party can be every person from the age of
eighteen up who accepts the program and statutes of the Communist
International and the Communist Party of the U. S. A., who becomes
a member of a basic organization of the Party, who is active in this
organization, who subordinates himself to all decisions of the Comin-
tern and of the Party, and regularly pays his membership dues.

54 4. Members who change their place of work or in case they
are members of a street nucleus, their place of residence, must
secure a transfer card from the Party unit in which they have held
membership and must present this card to the unit to which they have
been transferred. A duplicate of the transfer card given the member
shall be sent to the leading committee of the territorial section from
which the member transfers and transmitted by this committee to the
territorial section to which the member transfers.

If the member transfers from one section to another, the transfer
card shall be transmitted thru the D. C.; if the member transfers from
one district to another, the transfer card shall be sent thru the CC.
Transfers from one district to another shall be entered in the Mem-
bership Book of the Member.

6. Every member of the Party who is eligible to be a member of a
trade union must become a member of the union to which he is eligible.

§ 4—The Structure of the Party

1. The Communist Party, like all sections of the Comintern, is built
upon the principle of democratic centralization. These principles
are: * * *

(a) Election of the subordinate as well as the upper Party organs at
general meetings of the Party Members, conferences and conventions
of the Party.

(b) Regular reporting of the Party Committees to their con-
stituents.

(c) Acceptances and carrying out of the decisions of the higher
Party committees by the lower Strict Party discipline, and immediate
and exact applications of the decisions of the Executive Committee of

the Communist International and of the Central Committee of the Party.

55 (d) Any Party Committee whose activities extend over a certain area is considered superior to those Party organization whose activity is limited only to certain parts of this area.

(e) The discussion on basic Party questions or general Party lines can be carried on by the members only until the Central Committee has decided them. After a decision has been adopted at the congress of the Comintern, the Party convention, or by the leading Party committee, it must be carried out unconditionally, even if some of the members or some of the local organization are not in agreement with the decision.

2. The highest authority of each unit of the Party is the general meeting of Party members, conference or Party convention.

3. The membership meeting, conference or Party Convention elects the leading committee which acts as the leading Party organ in the interim between the membership meetings, conferences or conventions and conducts the work of the Party organization.

(Continued on Page 14.) Membership Dues for 1933.

Under the Month of January are affixed four adhesive stamps in blue color worded and designed, viz:

Dues Stamp: Communist Party. (Emblem of Sickle & Hammer) of the U. S. A. 10¢.

56 Under the Month of February are affixed two blue adhesive stamps worded and designed, viz:

Dues Stamp. Communist Party. (Emblem of Sickle & Hammer) of the U. S. A. 10¢.

(The spaces for the months of March through December, are blank and do not have any stamps attached.)

Thereafter follows a double page, entitled Membership Dues for 1934, listing the months of January through December, on which page all spaces are blank and no stamps or writing appears thereon.

Thereafter follows four blank pages entitled Assessment Stamps, no stamps or other writing appearing thereon.

Transfers

Granted from

Accepted to

City _____	City _____
District _____	District _____
Date _____	Date _____
{SEAL} _____	{SEAL} _____
District Organizer.	District Organizer.

Thereafter follows 10 additional blank spaces imprinted as above.

57

§ 5—The Party Nucleus

1. The basis of the Party organization is the nucleus (in factories, mines, shops, etc.), which all Party Members working in these places must join. The nucleus consists of at least three members. Newly organized nuclei must be enforced by the leading committee of the Section in which the shop nuclei are organized.

3. Party members who cannot be immediately affiliated with a shop nucleus shall join temporarily the street nucleus in the Section of the City in which they reside, until it shall be possible to create a shop nucleus in the factory.

§ 12—Party Discipline

1. The strictest Party discipline is the most solemn duty of all Party members and all party organizations. The decisions of the CI and the Party Convention of the CC and of all leading committees of the Party, must be promptly carried out. Discussion of questions over which there have been differences must not continue after the decision has been made.

§ 13—Party Dues

1. Each applicant for membership shall pay an initiation fee of 50¢ (Unemployed 10¢) which shall be receipted for by an Initiation Stamp furnished by the CC. Fifty percent of the sum of the Initiation Stamp shall go to the National Office and 50% to the District Office.

2. Each member shall pay dues weekly approximating 2% of his earnings, which shall be receipted for by dues stamps issues by the Central Committee. Dues Stamps shall be issued in five categories, as follows:

All members receiving

\$15 per week wages or less (including housewives and working farmers) pay 10¢ dues weekly.

Over \$15 and up to \$25 per week wages shall pay 25¢ dues weekly.

Over \$25 and up to \$30 per week wages shall pay 50¢ dues weekly.

Over \$30 and up to \$40 per week wages shall pay 75¢ dues weekly.

Over \$40 and up to \$50 per week wages shall pay \$1.00 dues weekly.

Members receiving over \$50 per week wages, shall pay in addition to the regular \$1.00 per week dues, additional dues (special tax) at the rate of 50¢ for each \$5.00 (or fraction) of their weekly earnings above \$50.00.

3. The district organization shall purchase all dues stamps at 50% retail price; the district shall sell at 80% retail price to Section; and the Sections shall sell them at 90% retail price to units.

4. All local or district assessments or collections are prohibited except by special permission of the Polcom. Special assessments may be levied by the national convention or the CC. No member shall be

considered in good standing unless he purchases such special assessment stamps.

5. Members unable to pay regular dues on account of unemployment, strikes, illness, or similar reason shall pay 2 cents per week
- 59 6. Members who are four weeks in arrears in payment of dues cease to be members of the party in good standing. Members who are three months in arrears shall be stricken from the rolls. No member of the Party shall pay dues in advance for a period of more than six weeks.

What is the Communist Party?

The Party is the vanguard of the working class and consists of the best, most class conscious, most active, the most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle, basing itself upon the revolutionary theory of Marxism and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action. (From the program of the Communist International.)

We are the Party of the working class. Consequently, nearly the whole of that class (in time of war and civil war, the whole of that class) should work under the guidance of our Party, should create the closest contacts with our Party. (Lenin.)

On Discipline

He who weakens, no matter how little, the iron discipline of the Party of the proletariat (especially during the period of dictatorship) effectually helps the bourgeoisie against the proletariat. (Lenin).

The Party as the best training school for working class leaders, is the only organization competent, in virtue of its experience and authority to centralize the leadership of the proletarian struggle and thus to transform all non-Party working class organizations into accessory organs and connecting belts linking up the Party with the working class as a whole. (Lenin).

60 *Exhibit 5 being hearing before Walter L. Wolf, Acting
District Director of Naturalization*

STATE OF ARKANSAS,
County of Garland, ss.

In the Matter of Petition for Naturalization of Joe Strecker No. 692, In the United States District Court at Little Rock, Arkansas

Persons present in the office of Mr. Houston Emory, Citizens Building, Hot Springs, Arkansas: Joe Strecker, Curtis L. Ridgway,

Assistant Prosecuting Attorney for Garland County, Ark., and Walter L. Wolf, Acting District Director of Naturalization, St. Louis, Mo.

Examination by Mr. Wolf:

Q. Mr. Strecker, you have appeared at this office voluntarily and you are informed that I am a representative of the United States Government in connection with Naturalization matters. I desire to question you concerning certain facts and circumstances in connection with your pending petition for naturalization in the United States District Court at Little Rock, Arkansas, which was filed by you on March 1, 1933. Are you willing to make full, true and correct statements to such questions as I may propound to you, with full knowledge on your part that your response to such questions may be used against you by the Government in any way it may see fit?

A. Yes, I am willing to make such a statement with that understanding. I will tell you all the truth about myself.

Q. Please state your full name, the date of your birth, the place of your birth, the approximate date, place and manner of your arrival in the United States, and your present place of residence?

61 A. My full name is Joseph Strecker, but I usually use the name of Joe Strecker for convenience. I was born at Kamionka, Sturm, Austria, on August 28, 1888. I arrived in the United States at the port of New York on November 7, 1912, on the vessel "Bremen." I now reside at 213 Magnolia Street, Hot Springs, Arkansas.

Q. Have you ever been absent from the United States since your arrival in this country on Nov. 7, 1912?

A. No; I have never been away from the United States since the date mentioned.

Q. Where have you lived since your arrival in the United States?

A. I first lived at Monassen, Pennsylvania, remaining there until June 1913; then I went to Bentleyville, Pennsylvania, where I stayed until March 1914; then to Wheeling, West Virginia, for two months; I then returned to Bentleyville, Pa., where I lived until the fall of 1916, when I removed to Viegler, Illinois. I lived in Ziegler until May 1917, when I removed to Orient, Illinois. I lived in Orient until May 15, 1918, when I removed to Hot Springs, Arkansas, at which place I have lived ever since.

Q. What is your business?

A. I have not been employed since June 1930, on account of poor health. Just before I quit work I had my own restaurant for over five years, the same being located at 105 East Grand Avenue, Hot Springs. Before going into business for myself, I was employed in a restaurant owned by Nick Nixon at 112 Malvern Avenue. I worked for Nick Nixon three years. Before working for Nick Nixon I was employed in a restaurant operated by Jim Fotio, for whom I

worked about six or seven months. For over two years I was laid up with rheumatism so that I could not work at all.

Q. I notice, Mr. Strecker, that in your petition for naturalization you have made the statement under oath that you are married; that your wife's name is Sophia; that you were married to her in
62 June 1911, Kamionka Strum, Austria, and that she has never come to the United States. You also allege in your petition for naturalization that you have a child, Joseph Strecker, who was born at Kamionka, Austria, on October 15, 1912, and that he still lives at Kamionka, Austria. Are these statements of your petition correct?

A. Yes; those statements are correct.

Q. Have you ever made any effort to bring your wife and child to the United States?

A. Yes; I have asked her several times to come to the United States, but she has refused to do so. She was living with her mother until her mother dies sometime in 1925. My boy is now married and lives near Kamionka, Austria.

Q. Mr. Strecker, in your application to the St. Louis office of the Naturalization Service to file your petition, you named as your proposed witnesses, Louis Benedict, and Florence Gardner. How long have you known Louis Benedict?

A. I have known Louie Benedict since 1918. He at one time had a bakery in Hot Springs on Grand Avenue.

Q. How long have you known Florence Gardner, the other witness named by you in your application to file petition for naturalization?

A. I have known Florence Gardner since about 1925.

Q. In what way are you acquainted with Florence Gardner?

A. Florence Gardner came to eat in my restaurant about 1925, or maybe it was 1926, and asked me for a job in the restaurant. About three months after I first met Florence Gardner I employed her as waitress and cook in my restaurant. I had a room at her house, which I took about six months after she commenced working for me.

Q. Information has come to me that you are now living with a woman who is not your wife. Is true or not?

A. I have not lived with a woman as my wife since 1932, when I purchased the property at which I now live. The number of which is 213 Magnolia Street, Hot Springs, Arkansas. Before 1932, I
63 had sexual relations with Florence Gardner for about five years. Florence Gardner is about ten years older than I, and she would come to my room where we had intercourse, sometimes once a week and sometimes once in two weeks and sometimes oftener.

Q. Did you pay Florence Gardner any money for having intercourse with you?

A. Yes; I treated her just like I would my wife, sometimes giving her \$10.00, sometimes \$5.00, sometimes \$1.00, or by purchasing for her shoes, clothing, or anything else she might like. I also paid her

about \$7.00 a week for her services in my restaurant as cook and waitress.

Q. Did you ever introduce Florence Gardner to any of your friends or acquaintances as your wife?

A. No; I did not. Sometimes people would ask me if Florence Gardner was my mother, as she is considerable older than I am.

Q. How long has it been since you have had sexual intercourse with Florence Gardner?

A. About eight or ten months. I told her not to come to my house any more.

Q. Have you had any other woman with whom you have maintained immoral relations?

A. Yes; whenever I see a woman on the street and want a woman, I get one.

Q. How many women would you say you have had immoral relations with in Hot Springs?

A. I don't know, but it has been a great many. I usually pay them whatever they ask if I have the money.

Q. For how long a time have you followed this immoral method of living?

A. Ever since I came to the United States. I went to Pittsburgh from Monassen when I lived in Monassen and Bentleyville every Saturday night, and went to houses of prostitution on Second Street, among others, in Pittsburgh.

Q. Are you afflicted with syphilis or any other venereal disease?

64 A. No; I do not think so. I have been informed that I have sciatic rheumatism.

Q. I have been informed that some girl recently got into serious trouble at Newport, Ark., and that you had some connection with this trouble. Will you tell me about this matter?

A. A street walker by the name of Florence, whose last name I do not know, got into some kind of trouble at Newport or Batesville, Ark. She wrote me asking me for money as she was sick and had only eight cents in her pocket book. I could not send her any money because I knew her only as Florence. I have had intercourse with her about twice here in Hot Springs.

Q. Mr. Strecker, did you ever send your wife money in Austria for her support and the support of your son?

A. Yes; I estimate that I have sent my wife about \$1500.00 (Fifteen Hundred dollars) since my arrival in the United States almost twenty-one years ago. I sent her on one occasion \$500.00 which I believe was in the year 1928. I have sent her various amounts at other times, ranging from \$10.00 to \$50.00, sometimes \$100.00.

Q. Have you any papers to show which will prove that you have ever sent your wife any money at all?

A. I do not know if I can produce any records, unless possibly the Postoffice or the Arkansas Trust Company, of Hot Springs, would have such a record. I sometimes sent a money order by the name of

Snitzer, who had a bank in New York City, and Snitzer would send the money to my wife, as he could do it cheaper than to send it from Hot Springs direct.

Q. Have you ever been arrested or charged with violation of any law of the United States or of any state or municipality?

A. Yes; I have been arrested as follows: I was arrested on a charge of selling liquor at my restaurant in the year 1926 or 1927, but I was not convicted as I had no whiskey in my restaurant. I was also arrested for having immoral relations with Florence Gardner, the woman mentioned earlier in this statement, and was fined \$10.00 (Ten Dollars) by Judge Ledgerwood, of the Hot Springs Municipal Court. I was also charged with selling cigarettes without stamps but was not fined on this occasion.

Q. Are you certain that you have never been arrested on any other occasion?

A. I have never been arrested on any other occasion than the three times above mentioned.

Q. I notice in the statement numbered 29 on your application to file petition for naturalization you deny ever having been arrested or charged with the violation of any law of the United States or State or City Ordinance or traffic regulation. Why did you make this misstatement in your application?

A. I had the lady at Little Rock in the office where I paid the \$10.00 (Ten Dollars) fill out this application for me. I did not want to tell her that I had been arrested and I thought that if I said I had never been arrested, I would get my papers without too much red tape.

Q. It has been reported to the Government that you are connected with the Communists at Hot Springs. Please state if you are at this time or have ever been a member of the communist party, or of any other organization which has for its purpose the embarrassment or the destruction of the Government of the United States?

A. Yes, I joined the Communist Party last November, at a time when a meeting was had at the Negro Church located at 410 East Grand Avenue, in Hot Springs, Arkansas, on November 1, 1932. I paid forty cents to some man from Little Rock, and was given a book about January 1933, which book contains stamps showing the amount paid by me. There were present at the above mentioned meeting about fifty people, some of whom were negroes and other whites.

Q. Is it true as reported to the Government that you have been distributing Communist literature?

A. A tailor from Little Rock handed some of this literature and I handed it to somebody else, but I do not know the name of the person or persons to whom I handed it.

66 Q. Is it not true that at one time you had a considerable quantity of Communistic literature in your home?

A. I have received letters from New York urging me to buy Gold Bonds of the Communist Government in Russia.

Q. Have you ever bought any of these bonds?

A. Yes, I have bought 2,200 rubles worth of bonds of the Soviet Union, Socialist Republic, for which I paid in American money the sum of Fifteen Hundred and Eight' Eight (\$1,588.00) dollars.

Q. When did you make this purchase?

A. About two months ago.

Q. What was your purpose in purchasing the above bonds?

A. It was represented to me that the United States Government's money would soon be worthless, or at best very cheap, and I thought it wise for my own protection to put my money into bonds of the present Russian Soviet Government. These bonds are paying interest in gold dollars American money.

Q. Is it not a fact that you went to a man at a filling station and asked him to distribute Communistic literature?

A. I do not remember. I may have handed somebody literature of this kind, but I am unable to recall just who it was.

Q. You stated that you had paid forty cents for which you received a book of stamps in it showing that you are a member of the Communist Party. Please state if you have ever paid any other money to the Communist Party?

A. No, I have never paid any more money to the Communist Party.

Q. Do you take any newspapers of any kind, which have any connection with Communism?

A. A Russian by the name of John Greenock (?) stayed at my house sometime last year and left owing me \$10.00 room rent. He wrote me and told me that he could not pay this room rent, but that he would send me the Communist Paper known as the Daily Worker, 67 printed at New York, and this paper has been coming to my home about nine months. It comes sometimes every day and sometimes every other day.

Q. And I suppose that you read this paper?

A. Yes; I read this paper.

Q. Have you ever written to this paper asking that it be discontinued?

A. No; I have not.

Q. Do you now deny on your oath that you are a Communist at heart?

A. I do not consider myself a Communist, because I am not paying dues to the Communist Party. I do not know whether we shall ever have a Communistic system in the United States. I have read Marx's books and Marx states that sooner or later there will be a Red Government in every country in the world. I am trying to protect myself, and that is why I bought the bonds of the Russian Government. I do not know what is going to happen; I do not know how long I am going to live. If I knew when I was going to die, I would get me about four women and have a hell of a time before I die. If Communism comes in this country I will not be

against it, because I have got to go with the people, and whatever the people want I will have to go along with them.

And further the said Joe Strecker said not.

(Signed) JOE STRECKER.

Subscribed and sworn to before me this 16th day of September 1933.

(Signed) WALTER L. WOLF,
Acting District Director of Naturalization
for the 12th Naturalization District.

Signed in the presence of Curtis Ridgway.

68 *Exhibit 6, being record of hearing before L. B. Stenaland, immigration inspector, on May 23rd, 1934, at Hot Springs, Arkansas.*

United States Department of Labor Immigration and Naturalization Service, New Orleans, Louisiana. New Orleans File No. 34000/62. Record of Hearing.

Present for the Government: L. B. Stenaland, Imm. Inspector.

Present for the alien: Felix L. Smith, Attorney for alien.

Case re-opened at Hot Springs, Arkansas, by authority of Bureau letter of May 8th, 1934, No. 55848/822.

Emergency Stenographer: Miss Blanche Nichols.

Hearing held at office of Attorney Felix L. Smith, Hot Springs, Arkansas, May 23rd, 1934.

By Inspector L. B. STANALAND:

Alien, being first duly sworn, testifies, in English, as follows:

Q. What is your name?

A. Joe Strecker.

Q. Were you ever known by any other name?

A. Never.

Q. Isn't it true that you are known as Joseph George St'ecker?

A. They call me Joseph at home.

Q. Haven't you used the name of Joseph G. Strecker?

A. No.

69 Q. Are you the same Joseph George Strecker who made a sworn statement in the office of the Chief of Police of Hot Springs, Arkansas, before Immigration Inspector Carroll D. Paul on Oct. 25th, 1933?

A. Yes. I did make a statement but I don't remember the name of the Inspector.

Q. Are you the same Joseph Strecker who made a sworn statement before the acting district inspector in the presence of Curtis Ridgway in September 1933?

A. Yes, sir.

Q. Are you the same Joseph Strecker or Joseph G. Strecker who made a sworn statement before Inspector Isaac H. Vincent in Hot Springs, Arkansas, January 23rd, 1934?

A. Yes, sir.

Q. You are advised that the Bureau of Immigration and Naturalization of Washington has ordered that the case be re-opened for the purpose of introducing into the records of International or other authorities sufficient exhibits of Literature of the Communist Party to show that the Party advocates to overthrow by force or violence the United States Government or other forms of organized government. You are advised that the Government will introduce a copy of The Communist dated April 1934, Eighth Convention Issue, a magazine of the Theory and Practice of Marxism-Leninism, published monthly by the Communist Party of the United States of America:

Exhibit "A." (Page 337—1st, 2nd, and 3rd paragraphs.)

"The Austrian revolt bore out the correctness of the prediction made by Comrade Stalin, in his report to the Seventeenth Congress of the Communist Party of the Soviet Union. On the 26th day of January, seventeen days before the Austrian revolt, Comrade Stalin had declared:

70 "But if the bourgeoisie chooses the path of war, then the working class in the capitalist countries who have been reduced to despair by four years of crisis and unemployment takes the path of revolution. That means that a revolutionary crisis is maturing and will continue to mature. And the more the bourgeoisie becomes entangled in its war combinations, the more frequently it resorts to terroristic methods in the struggle against the working class and the toiling peasantry, the sooner will the revolutionary crisis mature."

"The Austrian workers took the path of revolution—and their guns dealt death to Austro-Marxism."

Exhibit "B." (Page 341—1st, 2nd, and 3rd paragraphs.)

"How aptly the theory of Austro-Marxism matches its practice! Recently the leader of Austrian social-democracy, Otto Bauer, declared:

"In Austria, more than in almost any other country, there is the prospect that State power will be won by the working class along the road of democracy. If but the proletariat here will understand merely how to make use of their legal opportunities, then very soon the bourgeoisie will begin to shout, as Odilion Barrot did in 1849: 'La legalite nous tue!' (Legality is killing us!)

"If at the same time our soldiers, our gendarmes, our schutzbund is defending republican legislation, then the bourgeoisie will be unable to smash this legislation, since the legal measures of the election address place the legal powers in our hands."

"Very true, Herr Bauer, legality has killed us! But it is not Odilion Barrott, nor Englebert Dollfuss—but the workers of Austria who cry out these words!

71 "They whom you subjected for decades to the use of their 'legal opportunities'; whom you allowed to be systematically disarmed, lest they use their extra-legal opportunities; whom, by your own confession, you held back in March of last year from responding

to the call of the Communist Party for the general strike that would have broken the fascist offensive; whom you betrayed by your advocacy of the use of 'legal opportunities' of accepting fascist decree after decree. They whom you urged to retreat before the government's attacks upon their living conditions, whom you instructed to offer no resistance to the destruction of their political rights;—they whom you taught to defend bourgeois republican legislation, the Schutzbund, whose dissolution you permitted without a summons to resistance as a stoic exercise in the use of the legal 'opportunities' of obedience to fascism; they whom you tried to chain to the United front with fascism in the black shirt under the pretense of fighting fascism in the brown shirt—it is they who cry 'Legality has killed us!' The workers of Austria cry out these words.

Exhibit "C." (Page 392—First and Last Paragraph)

"The call for help of the Central Executive Committee of the Chinese Soviet Republic must not remain without a wide echo, which should be translated into acts.

"Every party that desires to belong to the Communist International must give every possible support to the Soviet republics in their struggle against all counter-revolutionary forces. The Communist parties should carry on a precise and definite propaganda to induce the workers to refuse to transport munitions of war intended for enemies of the Soviet Republics, carry on legal, or illegal propaganda among the troops which are sent to crush the workers' republics, etc."

72 "To fulfill this duty, the Communist Parties must carry to the broadest masses the words of the call of the Central Executive Committee of the Chinese Soviet Republic, which are directed to the toilers of the entire world. They must conduct not only agitation, but they must also organize actions directed against the transportation of weapons and munitions to China, against the intervention of American, European, and Asiatic imperialists."

Exhibit "D." (Page 393—By Wan Ming—Second Paragraph.)

"The first and most important difference is that the plan of the campaign, the intervention of the international imperialists (America, Japan, England, France, Germany and others) against the Chinese Soviet Republic, has been worked out with greater frankness, more nakedly, with greater energy and solidarity. All the other differences result from this most important one."

Exhibit "E." (Page 404—Last Paragraph)

"It is more than likely that in the course of the development of the world revolution, there will come into existence—side by side with the

foci of imperialism in the various capitalist lands and with the system of these lands throughout the world—foci of socialism in various Soviet countries, and a system of foci throughout the world. As the outcome of this development, there will ensue a struggle between the rival systems, and its history will be the history of the world revolution. The world-wide significance of the October revolution lies not only in the fact that it was the first step taken by any country whatsoever to shatter imperialism, that it brought into being the first little island of socialism in the ocean of imperialism, but likewise in the fact that the October revolution is the first stage in the world revolution and has set up a powerful base whence the world revolution can continue to develop." (Stalin, "The October Revolution and the Tactics of the Bolsheviks." Leninism, International Publishers, Vol. I, pp. 215, 216.)

Exhibit "F." (Page 406—2nd paragraph.)

"Such a formulation of this question is certainly not Marxian. To confine the work of the Party to the propagation of the final overthrow of capitalism, without mobilizing the workers for struggle against capitalism, is nothing less than the betrayal of the working class to the bourgeoisie. The task of the revolutionary party of the working class is to defend the everyday interests of the working class, but to do so in such a way that the workers will understand from their own experience, that only with the overthrow of capitalism and the establishment of the rule of the working class will their interests be finally secured. "The Party must neither stand aloof from the daily needs and struggles of the working class nor confine its activities exclusively to them. The task of the Party is to utilize these minor everyday needs as a starting point from which to lead the working class to the revolutionary struggle for power." (C. I. Program.)

Exhibit "G." (Page 409—2nd, 1st, 3rd, and 4th paragraph.)

"In a period of imperialism, to propagate for a proletarian revolution without carrying on propaganda and preparation for the mass political strike and for an armed insurrection of the fight for power, means to disarm the workers in the fact of the attack of the bourgeoisie.

"DeLeon's conception of the proletarian revolution was the same, as far as the deception for the American proletariat goes, as that of the reformists of the Second International, in spite of his revolutionary phrases. Lenin, in his State and Revolution, makes a classical formulation about Kautsky's position on this point, which can fittingly apply to DeLeon, Lenin states:

"The necessity of systematically fostering among the masses this and just this point of view about violent revolution lies at the root of the whole Marx' and Engels' teachings. The neglect of such propaganda and agitation by both the present predominant social-chauvinists and Kautskyst currents being their betrayal * * * into prominent relief." (P. 20, International Ed.)

"The question of a violent revolution lies at the root of Marx's teachings. Only philistines or downright opportunists can talk about revolution without violence."

Q. You are advised that a true transcription of the quotations just read to you will be included in the records of this hearing and that the pamphlet from which these examples were taken will be made a part of the record for the Secretary of Labor of Washington, D. C., for her consideration in the disposition of this case. Have you any documents to present or evidence to offer at this time in rebuttal of this evidence that your membership in the Communist Party constitutes membership in an organization which believes in or teaches the overthrow by force or violence the government of the United States or all forms of organized government?

A. Yes; I have evidence I wish to introduce to rebut the exhibits as presented.

G. MERRITT, witness, called, sworn, testified:

By FELIX L. SMITH:

Q. State your name.

A. G. L. Merritt.

Q. Where do you live, Mr. Merritt?

75 A. 2226 Central Ave., Hot Springs, Arkansas.

Q. What is your trade?

A. Wholesale tobacco and candies.

Q. How long have you lived in Hot Springs?

A. About 32 years.

Q. Are you acquainted with Joe Strecker?

A. I am.

Q. How long have you known Mr. Strecker?

A. I have been knowing him for 10 or 11 years.

Q. During that time what has been your opportunity of knowing the defendant?

A. He was in business about two years on Grand Avenue and I called on Joe two or three times a week during the two years he was in business in the interest of selling him cigars, cigarettes, and candy.

Q. What has been your opportunity of knowing Mr. Strecker since that time?

A. Since that time I have seen very little of Joe.

Q. Upon your acquaintance with Mr. Strecker I will ask you to state your opinion as to him being a law abiding resident of Hot Springs.

A. Every opinion I have had of Joe has been that he is upright and honest in every dealing I have had with him.

Q. During the time that you knew Mr. Strecker in business relations I will ask you to state what you may know of your own knowledge as to the moral life of Strecker?

A. His morals, as far as I know, are all right.

Q. Did you ever call on Joe and find him drunk or drinking?

A. Have never found him drinking or drunk.

Q. What has been your information about the reputation of Joe in Hot Springs?

A. I have made no inquiries and have heard no one say what his reputation is.

Q. Is it your opinion that Joe Strecker is a good resident?

A. I would say so, yes.

Q. Do you visit Mr. Strecker in his home?

A. I believe I called at Mr. Strecker's home once or twice, in a business way to collect a little bill he owed me.

Q. Does Mr. Strecker visit you in your home?

A. No.

Q. Do you know that Mr. Strecker has ever bought whiskey?

A. No, not that I know of.

Q. Have you ever known Mr. Strecker to advocate Communism or any form of violence in Government conditions?

A. No, sir.

EMMETT DOOLEY, witness called, sworn, testified:

By FELIX L. SMITH:

Q. State your name.

A. Emmett Dooley.

Q. Where do you live, Mr. Dooley?

A. 202 Jackson Avenue, Hot Springs, Arkansas.

Q. How long have you lived in Hot Springs?

A. About 20 years.

Q. What is your occupation?

A. Musician.

Q. Do you know Joe Strecker?

A. Yes, sir.

Q. How long have you known him?

A. 10 or 12 years.

Q. During that time what has been your opportunity of knowing Mr. Strecker?

A. To eat in his place most every day and to visit around with him when I didn't have anything to do and we usta be "cronies" on the street.

Q. How often have you seen Joe Strecker in the past 10 years?

A. Two or three times a week. Sometimes every day when he was in the restaurant.

Q. Do you commonly meet and converse with Strecker?

A. Yes, sir.

Q. Has Strecker ever advocated Communism to you?

A. No, sir.

Q. Has he ever advocated any violent means of force to overthrow our Government?

A. No, sir.

Q. Do you consider Strecker a desirable resident?

A. Yes, sir; very much so.

Q. I'll ask you to state your opinion of the moral character of Joe Strecker?

A. I think it is first class. We used to drink a little beer together a long time ago is the only thing I know of.

By Inspector L. B. STANALAND:

Q. Where were you born?

A. Brandenburg, Ky.

Q. Do you visit Mr. Strecker in his home?

A. I have visited him once or twice in his home.

Q. Does Mr. Strecker visit in your home?

A. Yes; he has been there three or four times.

Q. Do you ever know of Mr. Strecker being arrested?

A. One time.

Q. What was the charge?

A. A negro came into his place of business drunk and started a little row. Two officers came in and arrested him, but he was released the next morning.

Q. What was the charge?

A. They just came in and grabbed him—I don't know the charge.

Q. Did you know Joe Strecker in 1932?

A. Yes, sir.

Q. Did he ever talk politics with you at all?

A. No, sir.

That's all.

78 PATRICK EARLY, witness called, sworn, testified:

By FELIX L. SMITH:

Q. State your name.

A. Patrick Early.

Q. Where do you live, Mr. Early?

A. 315 Quapaw Avenue, Hot Springs, Arkansas.

Q. How long have you lived in Hot Springs?

A. 34 years.

Q. Where were you born?

A. Worcester, Mass.

Q. Are you acquainted with Joe Strecker?

A. Yes, sir.

Q. How long have you known him?

A. About 7 years.

Q. During that time what has been your opportunity of knowing him?

A. I was employed at the Ozark Sanatorium Bath House where he used to come in and get hot water.

Q. How often have you seen Joe Strecker in the past 7 years?

A. I have seen him sometime every day for six months at his place or where I live.

Q. Would you say that you are intimately acquainted with him?

A. Yes.

Q. Upon your acquaintance with Joe Strecker I will ask you to state what is your opinion of this man as a resident?

A. He seems to me to be alright and upright as far as I can see.

Q. Have you ever discussed any political matter with him?

A. No.

Q. Have you ever heard Strecker discuss Government matters?

A. No; I never did.

Q. Do you know anything about the moral character of Joe Strecker?

A. No.

79 Q. Have you ever heard him advocate Communism?

A. No, that is something I wouldn't stand for.

Q. Have you ever heard that Joe Strecker is a Communist?

A. No.

Q. Have you had any business relationships with him?

A. No.

Q. Did you eat at his place when he was in the restaurant business?

A. No.

Q. Do you work now?

A. No, when I got a pension from the Spanish War I quit working.

S. W. WRIGHT, witness called, sworn, testified:

By FELIX L. SMITH:

Q. State your name.

A. S. W. Wright.

Q. Where do you live, Mr. Wright?

A. 101 Lindy Street, Hot Springs, Arkansas.

Q. How long have you lived in Hot Springs?

A. Since 1913.

Q. Where were you born?

A. Kentucky.

Q. What is your occupation, Mr. Wright?

A. I am a painter by trade, but haven't been working at that lately. I have been handling a little real estate.

Q. Are you a property owner?

A. Yes, sir.

Q. Are you acquainted with Joe Strecker?

A. Yes, sir.

Q. How long have you known him?

A. 11 or 12 years, ever since I came here, I guess.

Q. What has been your opportunity of knowing Joe at this time?

A. By passing and re-passing and I have been out to his place sometime two or three times a week.

80. Q. Would you say that you are intimately acquainted with Joe Strecker?

A. Well, yes.

Q. Upon your acquaintance what is your opinion of Joe Strecker as a resident?

A. As far as I know he has been loyal and upright and is as good as the average citizen of Hot Springs.

Q. Have you at any time heard Joe Strecker advocate Communism?

A. No, sir, I never did.

Q. What is your opinion of his moral character?

A. As far as I have seen it is as good as the average.

Q. Have you had business dealings with Mr. Strecker?

A. No business whatever. I have just been in his place for eats and drinks and I lived about 300 yards from his place.

Q. Have you ever visited in Mr. Strecker's home?

A. No, sir.

Q. Did you ever see him do any bad things around in town?

A. No, sir.

Q. Did you ever hear him say he had enemies or know of him fighting with them?

A. No, not that I know of.

Q. Did he ever bootleg?

A. No, not that I know of.

Q. Is Joe Strecker commonly known as a man that gives the town trouble?

A. Absolutely not.

Q. Do you know of anything in conversing heretofore that would keep Joe Strecker from being a good citizen to this country?

A. No.

By Inspector STANALAND:

Q. Do you owe Joe Strecker anything?

A. No, not a dime.

Q. Are you under any obligation to him?

A. None whatever.

81. Q. How long do say that you have known Strecker?

A. 10 or 12 years.

Q. Are you married?

A. Yes.

Q. Have you ever visited in his home?

A. No.

Q. Have you ever talked politics with him?

A. No, sir.

Q. Did you discuss the recent Presidential election with him?

A. No.

Q. Do you know whether he is a follower of the Communist Party or not, who believes in a force of violence to overthrow our Government?

A. He is always for our Government.

Q. Do you know whether he was ever arrested or not?

A. Just hearsay—I don't know for sure.

Q. Did Mr. Strecker ever keep a woman?

A. If he did I didn't know it.

That's all.

JOE STRECKER.

By FELIX L. SMITH:

Alien, being first duly sworn, testifies, in English, as follows:

Q. State your name.

A. Joe Strecker.

Q. Where do you live?

A. 213 Magnolia Street, Hot Spring, Arkansas.

Q. Do you own the property where you live?

A. Yes, sir.

Q. Do you own any other property in the state of Arkansas?

A. Yes, I own a small farm.

82 Q. Where is this farm?

A. In Montgomery County.

Q. Do you own any other property in Arkansas?

A. No, sir.

Q. How long have you been a property owner in Arkansas?

A. Since 1927, I think.

Q. Do you hold considerable mortgage against property of other people at this time?

A. Yes, sir.

Q. Are any of these mortgages now due?

A. They are all due now.

Q. Have you ever at any time entered a foreclosure suit in the State of Arkansas against any of these people?

A. No, sir.

Q. Do you enjoy your residence in the United States?

A. Yes, very much.

Q. Is it your wish to remain in the United States?

A. Yes, sir.

Q. Do you wish to become a citizen of the United States?

A. Yes, sir.

Q. Have you ever at any time knowingly advocated the overthrow of the United States Government by violence or by revolution?

A. No, sir.

Q. Do you at this time advocate the overthrow of the United States Government?

A. No, sir.

Q. Do you believe that the Government of any other Country is superior to that of the United States?

A. No.

Q. On October 25th, 1933, you were examined at the office of the Chief of Police of Hot Springs, Arkansas, before Immigrant Inspector Carroll D. Paul, were you not?

A. I don't know his name, but I was examined at that time.

83 Q. At that time were you sworn?

A. I don't think so; I don't remember.

Q. At that time did you sign your name to your answers?

A. Yes; I signed them.

Q. Mr. Strecker, I hold in my hand what purports to be an examining given to you at that time and among the questions and answers found in this record you were asked the following question, "Will you tell me what the aim and purpose of the Communist Party of America is?" The record shows your answer to be, "Yes, the purpose is to overthrow Capitalism and establish a Government by the people." Following this question you were further asked, "Do you mean a Government similar to that now in existence in Russia." The record shows your answer was, "Exactly." Now, Mr. Strecker, I want to ask you if the record as read to you was correct?

A. No.

Q. I'll ask you to state, as you recall, what you said on that occasion?

A. I told him we don't want a Government like that of Russia. I am a Capitalist myself.

Q. Have you ever advocated the overthrow of organized government in this country or any other country by violent means?

A. No.

Q. Do you now advocate the overthrow of this government by violent means?

A. No.

Q. Were you examined in the office of the Prosecuting Attorney in the Citizens' Building in Hot Springs, Arkansas, on or about September 26, 1933, by Walter L. Wolf, at which time you were an applicant for citizenship in the United States?

A. Yes, sir.

Q. At that time, Mr. Strecker, were you sworn?

A. Yes, sir.

Q. At that time did you sign your name to the examination after it was concluded?

84 A. Yes, sir.

Q. I hold in my hand what purports to be this examination in which I find you are asked the following question, "Do you now deny on your oath that you are a Communist at heart?" to which your answer was, "I do not consider myself a Communist, because I am not paying any dues to the Communist Party. I do not know whether we shall ever have a Communist system of Government in the United States. I have read Marx's books and Marx states that sooner or later there will be a 'Red' Government in every country in the world. I am trying to protect myself and that is

why I bought the bonds of the Russian Government. I don't know what is going to happen; I don't know how long I am going to live; if I knew when I was going to die, I would get me about four good looking women and have a Hell of a time before I die. If Communism comes in this country I will not be against it, because I have got to go with the people and whatever the people want I will have to go along with them."

Now I will ask you to state, Mr. Strecker, if these records, as just read to you, were correctly transcribed?

A. He didn't write it the way I told him—he wrote it the way he wanted to and didn't read it to me.

Q. I'll ask you to state if on that occasion you did deny that you were a Communist.

A. I told him I was not a Communist.

Q. Mr. Strecker, I want to ask you to state or explain your future statements made at that time about the relations with women in which you said if you were going to die you would get about four women around before you die.

A. I expressed it in that way so he would stop questioning me and I was only joking.

Q. Were you serious at the time you answered the question?

A. I was merely joking and didn't mean it.

Q. Is that your idea of happiness on earth?

A. No.

95 Q. Do you admit making that statement on that occasion?

A. Yes.

Q. Did you mean the statement at the time you made it?

A. No.

Q. I'll ask you to state that if ever on any previous examination at any time did you admit that you were a Communist?

A. No, sir.

Q. Have you ever considered yourself as a Communist?

A. No.

Q. Do you now consider yourself one?

A. No.

Q. Mr. Strecker, you have been confronted on this question by the introduction of the certain exhibits from the Eighth Convention Issue of the April 1934 issue of the "Communist" and have had these excerpts read to you as exhibits in this case from this publication. Now, I'll ask you to state if you understand these quotations as they are read to you?

A. I don't know anything about this. I understand some and some I do not. I don't make my living trying to understand that.

Q. Mr. Strecker, I will ask you to state if you have ever seen a copy of "The Communist" prior to this date?

A. No.

Q. I'll ask you to state if you have ever been a subscriber to this publication?

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A. No.

Q. Have you ever received a publication prior to this time?

A. No.

Q. Did you know before today that there was such a publication in existence?

A. I never knew it.

86 Q. Are you at present a member of the Communist Party?

A. No.

Q. Do you subscribe to their doctrines or teachings?

A. No.

Q. Do you believe in their theory that was read to you today from "The Communist"?

A. No.

Q. I'll ask you to state what your opinion is, Mr. Strecker, as to whether the working class should organize in all lands against present constituted governments?

A. We should not organize against the government is my belief.

Q. Do you believe that Capitalist work against working class of people?

A. No; I don't think so.

Q. Mr. Strecker, do you advocate that the working class of people using guns or other destructive means to overthrow our government or any other government?

A. No.

Q. Mr. Strecker, do you know what the theory of Austro-Marxism is?

A. No.

Q. Do you believe or advocate that Government is killing us?

A. No.

Q. Do you believe in the overthrow of Government?

A. No.

Q. Mr. Strecker, are you at present taking any part to aid the works of any party outside of the United States? Are you a subscriber to any publication that audits that? Are you paying any dues to help any organization in any work like that?

A. No.

Q. Are you in sympathy with efforts to stop transportation of weapons to China?

A. I am not interested in anything like that.

Q. Are you satisfied with the working conditions in America?

87

A. Yes, sir.

Q. Do you consider yourself a working man or a Capitalist?

A. As I understand it when you have a few dollars you are considered a Capitalist and as I have a few dollars and am also a working man I would think I am both.

Q. Do you agree with any plans that you read from this book?

A. No.

Q. What are your ideas about the proper means to employ to make changes in the Government?

A. By voting and elections of good officials. I believe in evolution and not revolution.

By Inspector L. B. STANALAND:

Q. Mr. Strecker, were you ever arrested?

A. Yes.

Q. When? How many times?

A. I was arrested about three times.

Q. When and why was the first arrest made?

A. About 1927 or 1929 they came and arrested me for selling cigarettes.

Q. Was that the first time?

A. Yes.

Q. When and why was the second time?

A. I was arrested for possession of whiskey, but they didn't find any.

Q. Were you fined on the cigarette charge?

A. No.

Q. Were you convicted for the violation of the prohibition law?

A. No.

Q. Were you ever fined at any time?

A. Yes.

Q. When was that?

A. 1926 or 1927.

Q. Joe, do you deny that you made a statement before Inspector Carroll D. Paul on or about October 25th, 1933, that "you gave out literature that was sent to you from the headquarters in Kansas City to some other people to circulate"?

A. I have never distributed any literature at any time.

Q. What was your purpose of joining the Communist Party?

A. I wanted to find out what they were.

Q. How long was it before you found out what it was about?

A. Maybe a month or two, when I read the Worker.

Q. What do you mean about what you read?

A. When I read the "Daily Worker."

Q. Didn't they explain what the Communist Party meant at that meeting?

A. They just talked about big landlords and that we had to do something about it, but didn't say anything about the overthrow of any Government.

H. C. STEPHEN, witness called, sworn, and testified:

By FELIX L. SMITH:

Q. State your name.

A. H. C. Stephen.

Q. Where do you live?

A. 453 South Border St., Hot Springs, Arkansas.

Q. What is your occupation?

A. Salesman.

Q. Are you at present and past a Spanish War Veteran?

A. For 6 years.

Q. How long have you lived in Hot Springs?

A. I have been here for 7 years.

Q. Mr. Stephen, are you acquainted with Joe Strecker?

A. I am.

Q. How long have you known him?

A. About 4 years.

Q. During that time what has been your opportunity of knowing Joe Strecker?

89 A. I have been with him several times and have seen him with Benedict.

Q. During that time how often have you seen him?

A. I have seen Joe on an average of five or six times a month.

Q. Are you intimately acquainted with Joe Strecker?

A. Yes.

Q. I'll ask you to state, Mr. Stephen, your opinion of Joe Strecker as a resident of Hot Springs, Arkansas.

A. I have found him to be a good resident.

Q. Have you ever at any time discussed political matters with him?

A. Well, yes.

Q. Has this man on any occasion indicated to you that he holds to any belief in Communism?

A. No; but he has said something about having read the works of Karl Marx, but as I remember it he didn't hold with the teachings and that he has disposed of the books at this time and sometime prior to this.

Q. Upon your intimate acquaintance with Joe Strecker, I'll ask you to state what your opinion is of his moral character.

A. From what I know I would take it that he is about as good as the average.

Q. Upon this acquaintance with Mr. Strecker and upon what you have heard about the man, would you consider Joe Strecker in any sense an undesirable resident of Hot Springs?

A. No; I do not.

Inspector L. B. STANALAND:

Q. Are you married?

A. No, sir.

Q. Have you ever visited Mr. Strecker in his home?

A. Yes; on some occasions.

Q. Has he ever visited you in your home?

A. He has visited in my office several times while I was making it my home.

90 Q. You state that you have seen Mr. Strecker on an average of about 6 times a month. What was the occasion of these meetings with him?

A. Just a casual meeting on the street.

Q. Have you ever done any business with him?

A. Yes; I borrowed some money.

Q. How much?

A. About \$60.00 once.

Q. How long has that been?

A. Sometime in December of last year.

Q. Have you repaid this money?

A. Yes.

Q. When?

A. Last January.

Q. Did Mr. Strecker charge you any interest on this money?

A. No.

Q. Did you borrow it on any security?

A. No; just on my hand. By the way, you asked me if I paid any interest on the money I borrowed; yes, I paid a small interest.

Q. On what occasion did Joe tell you of Karl Marx?

A. When just discussing literature.

Q. Did you ever discuss politics with him at all?

A. Yes.

Q. Did he give you any outline at all of what he thought constituted a good Government?

A. No; the only talk we would have would be more on the general trend of the country, in regard to Socialism against Communism.

Q. Was he opposed to Communism?

A. Yes.

Q. Did he tell you he had been a member of the Communist Party?

A. He told me that he was once a member, but not now.

Q. Did he tell you why he was opposed to the Communist Party?

91 A. No.

Q. Did you ever hear him criticize the Communist Party?

A. No.

By FELIX L. SMITH:

Q. Where were you born?

A. In Texas.

That's all.

CLARK QUERTERMONS, witness called, sworn, and testified:

By FELIX L. SMITH:

Q. State your name.

A. Clark Quartermons.

Q. Where do you live?

A. 213 Magnolia St., Hot Springs, Arkansas.

Q. Are you a married man?

A. Yes, sir.

Q. How many in the family?

A. Wife and two children.

Q. For whom do you work?

A. Citizen's Cigar Store.

Q. How long have you lived in Hot Springs?

A. I came here in January 1928.

Q. Where were you born?

A. East St. Louis, Ill.

Q. Are you acquainted with Joe Strecker?

A. Yes.

Q. How long have you known Mr. Strecker?

A. I met Joe in the spring or summer of 1929.

Q. Have you known him since that time?

A. Off and on. I lived on East Grand and dropped in his place for breakfast.

Q. During the past six years I'll ask you to state how often you have seen Joe Strecker.

92 A. Up until last summer I just saw Joe a few times a month.

Q. Since the summer of 1933 how often have you seen Joe Strecker?

A. We moved into town in the summer and lived at Joe's place.

Q. I believe you are now staying at the same address as Mr. Strecker.

A. Yes, sir.

Q. How long have you stayed in the home where Mr. Strecker lives?

A. On this last occasion since the first of February 1934.

Q. I'll ask you to state if you are intimately acquainted with Mr. Strecker.

A. Yes; I would say I am very much intimately acquainted.

Q. Upon your acquaintance with him I'll ask you to give your opinion as to whether or not Mr. Strecker is a desirable resident of Hot Springs.

A. I should say that Joe is a very desirable resident of Hot Springs.

Q. How often do you see Mr. Strecker now?

A. I see him in the mornings before I go to work and in the evenings he comes in and listens to the radio. At least every day.

Q. What is your opinion as to the moral character of Mr. Strecker in his daily life?

A. Well, for a man of Joe's age and a bachelor, I would say he is an average. I have never seen him with anyone.

Q. How does Joe conduct himself about the house?

A. He is very neat and industrious and has a little garden by the side of the house where there is hardly a place for one.

Q. Is Mr. Strecker a drinking man?

A. Mr. Strecker has refused to drink with me several times.

Q. Have you ever discussed politics with him at any time?

A. No, sir.

93 Q. Have you ever heard the man advocate Communism?

A. No, sir.

Q. Have you ever heard him advocate the overthrow of this Government or any other government?

A. No, sir.

Inspector L. B. STANALAND:

Q. How long did you say you have known Mr. Strecker intimately?

A. Intimately, I have known him about one and a half years.

Q. You didn't know him during the recent Presidential election?

A. No.

Q. You have never discussed the election with him?

A. No, sir.

Q. You state that he is a desirable resident, why?

A. Because he is good hearted, takes my kid out and buys it ice cream and etc.

Q. You are renting from Mr. Strecker?

A. Yes, sir.

Q. Do you owe him any money?

A. No.

Q. Do you owe him anything?

A. No.

Q. You state that Mr. Strecker refused to take a drink with you—do you know that the possession of liquor is a violation of the law?

A. Yes, sir.

DEWELL JACKSON, witness called, sworn, and testified:

By FELIX L. SMITH:

Q. State your name.

A. Dewell Jackson.

Q. Where do you live?

94 A. 108 Edgwood, Hot Springs, Arkansas.

Q. What is your occupation?

A. Cashier of the Arkansas Trust Co.

Q. How long have you been employed there?

A. I have only been cashier for 4 months, but have been in the bank 17 years.

Q. Mr. Jackson, are you a member of the Hot Springs School Board?

A. Yes, sir.

Q. Are you a married man?

A. Yes.

Q. How many in the family?

A. Wife and one child.

Q. Where were you born?

A. Near Benton, Arkansas, Saline County.

Q. Mr. Jackson, I'll ask you if you are acquainted with Joe Strecker.

A. I am.

Q. How long have you known Mr. Strecker?

A. I have known Joe I expect 12 years at least, and maybe longer.

Q. During this time I'll ask you to state what your acquaintance has been with Mr. Strecker.

A. Well, my acquaintance has been with him only in the bank in a business way. I haven't been intimately associated with him, but he has dealt with the bank for 10 years. I was a teller *was a teller* at the bank at that time and waited on him during this time.

Q. During this time I'll ask you to state about how often you have seen Mr. Strecker?

A. I would say that he came into the bank twice a week on an average when he had the little place of business.

Q. State what, in your opinion, is a fair appraisal of Joe Strecker as a resident of Hot Springs?

A. Well, of course you understand all I can say is with reference to the dealings with him in a business way. In that way I can truly say that Joe has been just as square with us and very satisfactory in every way.

95 Q. Do you consider Mr. Strecker as an undesirable resident of Hot Springs?

A. He is just as desirable and more so as far as I can see as some of the citizens of Hot Springs. I have never heard or seen anything of Joe that would disqualify him.

Inspector L. B. STANALAND:

Q. Did you ever discuss politics with Joe?

A. No, sir.

Q. Do you know whether he was a member of the Communist Party?

A. No.

Q. Did he ever discuss our present Government with you or any form of government?

A. No.

Q. You would have no way of knowing his political views?

A. In the banking business we try to stay clear of all political talks.

That's all.

VIRGIL EVANS, witness called, sworn, and testified:

By FELIX L. SMITH:

Q. State your name.

A. Virgil Evans.

Q. Where do you live?

A. 1021 West Grand Ave.

Q. State your occupation.

A. Real estate dealer.

Q. You are the son of the former Circuit Judge W. H. Evans, of Benton, Arkansas?

A. Yes.

Q. Are you married?

A. Yes.

Q. How long have you lived in Arkansas?

A. All my life, except two or three years I lived out of the State.

Q. Are you acquainted with Joe Strecker?

A. I am.

Q. How long have you been acquainted with him?

A. About five years.

Q. During this time what has been the extent of your acquaintance with him?

A. I have known him in a business way only.

Q. State what your business relations with him has been.

A. He was a share holder in the National Park Building and Loan Association and I was Secretary of the Association.

Q. I'll ask you to state about how often you have seen Mr. Strecker since you first knew him.

A. On the average of about once a month, I presume, sometimes oftener.

Q. Have you at any time discussed any other than business matters with Mr. Strecker?

A. We have probably had some casual discussions, but any other than that, I don't recall anything.

Q. Have you ever been in Mr. Strecker's home?

A. No.

Q. Have you ever heard Mr. Strecker manifest any ill will against any constituted United States Government or any other form of government?

A. I have not.

Q. Have you ever heard that Mr. Strecker was a member of the Communist Party?

A. I have not.

Q. Upon your acquaintance with him I'll ask you to state what your opinion is of the man as a resident of Hot Springs?

A. My experience with him has been that he is a reliable, good, and trustworthy.

Q. Do you consider Mr. Strecker as an undesirable resident of the city?

A. Of my contact with him I would judge that he is not.

Q. Have you ever known anything against the moral character of Mr. Strecker?

A. Not at all.

Inspector L. B. STANALAND:

Q. You stated that from your contact with Mr. Strecker you believed him to be a desirable resident. What do you base this on?

A. Well, my contact has all been of the business nature. He impresses me that he is a man that has saved some money and is trying to get along.

Q. Did Mr. Strecker ever discuss politics with you?

A. No.

Q. He has never visited at your home and neither you at his?

A. No, sir.

Q. You would have no way of knowing whether Mr. Strecker is a Republican, Democrat, or Communist?

A. None other than in the business way.

Q. Do you ever see him distributing any literature for any candidate?

A. No.

FELIX L. SMITH:

Q. Do you consider Mr. Strecker radical?

A. From my experience I would say not.
That's all.

Mr. JOE STRECKER re-introduced and made the following statement:

I want to remain in the United States as this is where I made
98 my money, where I want to spend it and where I want to die and
I want no other country but the United States.

Certified correct, May 24, 1934.

L. B. STANALAND.

Immigrant Inspector.

Exhibit 7

Warrant--Deportation of Alien

UNITED STATES OF AMERICA,

DEPARTMENT OF LABOR,

Washington.

34035/137.

No. 55848/822.

Received 9 Aug. 20, 1934. U. S. Immigration Service, New Orleans.

To:—District Director of Immigration and Naturalization, New Orleans, La.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, from proofs submitted to me Assistant to the Secretary, after due hearing before an authorized immigrant inspector, I have become satisfied that the alien Joseph George Strecker alias Joe Strecker, who entered the United States at New York, N. Y., ex S. S. "Bremen," on ----- the 7th day of November, 1912, is subject to deportation under Section 19 of the Immigration Act of February 5, 1917, being subject thereto under the following provisions of the laws of the United States, to-wit: The act of October 16, 1918, as amended
99 by the act of June 5, 1920, in that he believes in and teaches
the overthrow by force and violence of the Government of the United States; that he is a member of an organization, association, society or group that believes in, advises, advocates and

teaches the overthrow by force and violence of the Government of the United States; that he is a member of an organization, association, society or group that writes, publishes and circulates written or printed matter advising, advocating and teaching the overthrow by force and violence of the Government of the United States; and that after entry he became a member of one or more of the classes of aliens enumerated in Section 1 of the aforementioned Act, as amended, to-wit; aliens who are members of an organization, association, society or group that believes in, advocates and teaches the overthrow by force and violence of the Government of the United States.

I, Turner W. Battle, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to deport the said alien to Poland, at the expense of the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1935," including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 14th day of August 1934.

[SEAL]

(Signed) TURNER W. BATTLE,
Assistant to the Secretary of Labor.

100 In United States District Court, Eastern District of Louisiana,
New Orleans Division

No. 983 Law

UNITED STATES OF AMERICA, EX REL JOSEPH GEORGE STRECKER,

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION &
NATURALIZATION, ETC.

Judgment

Filed July 30, 1937

This cause came on at a former day to be heard upon the petition of the relator for a writ of habeas corpus herein and after hearing arguments of counsel for the respective parties, the matter was submitted and the Court took time to consider:

Whereupon, and on due consideration thereof:

It is Ordered, Adjudged, and Decreed that the application of the Relator for a writ of Habeas Corpus herein be denied, and that the said petition be and the same is hereby dismissed;

It is Further Ordered that the relator Joseph George Strecker be remanded to the custody of the Immigration authorities to be dealt with according to law.

(Signed) WAYNE G. BORAH, *Judge.*

New Orleans, Louisiana, July 30th, 1937.

In United States District Court

Petition for appeal

Filed Sept. 21, 1937

To the Honorable the Judge of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The petition of Joseph George Strecker, Relator, in the above entitled and numbered cause, with respect represents:

I

That there is error in the prejudice of Relator in the judgment rendered herein on the 3rd day of July 1937, discharging the alternative writ of habeas corpus as to said Relator and denying the writ of habeas corpus applied for as will appear by the assignment of errors attached to this petition and forming part hereof.

II

Petitioner further alleges that he has been aggrieved by the said judgment and desires to appeal therefrom.

Wherefore, the premises considered, petitioner prays that he may be allowed to appeal herein to the United States Circuit Court of Appeals for the Fifth Circuit returnable within thirty days from this day at New Orleans, upon Relator giving bond in the sum of ----- conditioned as the law directs and that your petitioner, Relator, be admitted to bond pending the decision of this cause on appeal and that all proceedings under the order of deportation of the Department of Labor be stayed until said appeal be determined and that a
 102 citation and a copy of the order herein made be served upon Eugene Kessler, or Assistant District Director of Immigration and Naturalization, New Orleans, Louisiana, and

For all general and equitable relief.

(Signed) C. A. STANFIELD,
Attorney for Petitioner.

In United States District Court

Order allowing appeal

Filed Sept. 21, 1937

As prayed for an appeal with supersedeas is herein allowed petitioner (Relator) to the United States Circuit Court of Appeals for the Fifth Circuit, returnable according to law upon Relator giving bond in the sum of Two Hundred and Fifty Dollars conditioned as the law directs.

(Signed) WAYNE G. BORAH, *Judge.*

In United States District Court

Assignment of errors

Filed Sept. 21, 1937

1. Now comes the petitioner in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the 30th day of July 1937.

2. The Court erred in not holding that the introduction into
103 the record of the Department of Labor's deportation proceedings, held on January 23, 1934, and May 24, 1934, by Inspectors I. H. Vincent and L. B. Stanaland of the Department of Labor, respectively, of the card purporting to show that the petitioner had been a member of the Communist Party, was an abuse of discretion constituting a denial of due process of law, since the undisputed evidence was to the effect that said card had been obtained by an illegal search and seizure, over the objections of the petitioner and in violation of his rights.

3. The Court erred in not holding that the introduction into the record of evidence purporting to show that the Communist Party did, in 1934, advocate to overthrow by force or violence the United States Government or other forms of organized government was a capricious abuse of discretion amounting to a denial of due process of law; since the undisputed evidence was that the petitioner had not been a member of the Communist Party for two years prior to that date.

4. The Court erred in not holding that the introduction of the transcripts of the two hearings conducted by Mr. Walter L. Wolf and Mr. Carrol D. Paul, officers of the Department of Labor, on September 16, 1933, and October 25, 1933, respectively, constituted a denial of a fair and impartial hearings. The undisputed evidence was that the petitioner was taken into custody by local police officers and conducted by them to the hearings; that they remained present throughout the hearings; that the Hot Springs police officers had a reputation for being brutal and merciless administrators of the "third degree," and that the petitioner was frightened and intimidated; that
104 the petitioner was not advised of his right to counsel; that petitioner was not allowed counsel; and that petitioner was forced to sign one of the statements without being given the opportunity to read what was there written. Petitioner objected to the transcripts and testified that they were incorrect transcriptions of his statements. The introduction of said transcripts into the record of the deportation proceedings was an abuse of discretion which amounted to a denial of due process of law.

5. The Court erred in not granting the writ and discharging petitioner because of hearsay testimony introduced at the deportation hearings held on January 23, 1934 and May 24, 1934, in that the

alleged statements of petitioner, taken by Mr. Walter L. Wolf and Mr. Carrol D. Paul, were introduced at said hearing in the absence of said Walter L. Wolf and Carrol D. Paul, and said statements were not identified, and petitioner was deprived of his right to cross examine the said officers; and because of the introduction into the record of the deportation hearings of the excerpts of the alleged Communist periodical, which were hearsay in that they were not identified, nor was it shown that said periodical was published by or contained the teachings or opinions of the Communist Party; and because the testimony of witness, Mrs. Levering, taken at the deportation hearings as to the character of the literature by what her granddaughter had told her, and none of the literature was introduced into the record; and because the statement of witness, Dave Brown, introduced into the record of the deportation hearings is hearsay in that the witness was not produced to identify his statement nor for the purpose of cross examination; and because the authors of the transcripts of the hearsay evidence were not introduced as witnesses to enable the petitioner to cross examine them.

105 6. The Court erred in not granting the writ and discharging the petitioner because if the evidence procured by unlawful search and seizure, the statements of petitioner illegally secured and incorrectly transcribed, the hearsay and incompetent evidence, and the evidence as to the nature of the Communist Party in 1934 (when the petitioner is not alleged to have been a member) are excluded from the record of the deportation proceedings, there remains no evidence to sustain the findings of the Department of Labor. When any part of the said illegal evidence is excluded there remains insufficient evidence to sustain the findings.

7. The Court erred in not holding that the evidence was insufficient to sustain the findings. Considering the whole record, there is no evidence that the petitioner believes in, advises, advocates, or teaches the overthrow by force or violence of the Government of the United States; or that he belongs to an organization, party, or society that does; or that the Communist Party does; or that the Communist Party writes, circulates, distributes, prints, publishes, or displays or causes to be written, circulated, distributed, printed, published, or displayed, written or printed matter advising, advocating, or teaching the overthrow by force or violence of the Government of the United States. There is no evidence that petitioner, after his entry into the United States, became a member of an organization holding these proscribed views or engaging in these proscribed activities.

8. The Court erred in not granting the writ and discharging petitioner because the warrant of deportation is void since it directs the deportation of petitioner to Poland. Petitioner is a citizen of Austria, has never resided in Poland, has never been patriated by Poland, and there is no law authorizing his deportation to Poland.

106 9. The Court erred in not granting the writ and discharging the petitioner because the Department of Labor has misconstrued the

law. The recommendation that he be deported to Austria is based upon a finding that he has been a Communist. The law does not authorize the deportation of an alien because he is a Communist.

10. The Court erred in not maintaining the writ of Habeas Corpus and in not discharging the petitioner because the warrant of deportation was issued without according the petitioner a fair hearing as provided by law and the rules of the Department of Labor; the Department has incorrectly construed the Immigration Laws and Rules; there is not sufficient evidence in the record to sustain the findings contained in the warrant of deportation; the warrant of deportation is void; the Department of Labor has been guilty of such abuse of discretion as to deny due process of law.

11. Wherefore, petitioner and appellant prays that the judgment, decree, and order in said cause be reversed and the cause remanded, with instructions to the Trial Court as to further proceedings therein, and for such other and further relief as may be just in the premiss.

(Sgd.) C. A. STANFIELD,

Attorney for Appellant, Petitioner.

107 NOTE.—A cash deposit in the sum of \$250.00 has been posted with H. J. Carter, Esq., Clerk, U. S. District Court, Eastern District of Louisiana, in lieu of Appeal Bond.

In United States District Court

Praecepta for transcript of record

Filed Dec. 13, 1937

Praecepta of Documents To Be Included in Transcript.

1. Petition for Habeas Corpus.
2. Order.
3. Answer.
4. Agreed Statement of Facts.
5. Exhibit I, Warrant of arrest introduced in evidence as Ex. No. 3.
6. Exhibit II, Record of Labor Department, hearing held January 23, 1934. Introduced in evidence as Government's Exhibit No. 4.
7. Exhibit III, Report of Carrol D. Paul, introduced in evidence as Government's Exhibit No. 5.
8. Exhibit IV, Membership Book No. 2844 of the Communist Party, introduced in evidence as Government's Exhibit No. 6.
9. Exhibit V, Report of Walter L. Wolf, introduced in evidence as Government's Exhibit No. 7.
- 108 10. Exhibit VI, Record of Labor Department hearing of May 8, 1934, containing excerpts from a magazine, "The Communist," date April, 1934, and other evidence introduced in evidence here as Government's Exhibit No. 9.
11. Exhibit VII, Warrant of Deportation to Poland.

12. Judgment, denying application for writ of habeas corpus and dismissing petition.

13. Petition for Appeal and order allowing same.

14. Assignment of Errors.

15. Certificate of Clerk that cash deposit in lieu of bond had been posted, and of authenticity of record.

(Signed) C. A. STANFIELD,
Attorney for Relator.

109 [Clerk's certificate to foregoing transcript omitted in printing.]

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * *

110 In United States Circuit Court of Appeals for the Fifth
Circuit

No. 8680

JOSEPH GEORGE STRECKER

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND
NATURALIZATION

Argument and submission

March 21, 1938

On this day this cause was called, and, after argument by C. A. Stanfield, Esq., for appellant, and Leon D. Hubert, Jr., Esq., Assistant United States Attorney, for appellee, was submitted to the Court.

111 In United States Circuit Court of Appeals for the Fifth Circuit

No. 8680

JOSEPH GEORGE STRECKER, APPELLANT

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND
NATURALIZATION, APPELLEEAppeal from the District Court of the United States for the Eastern
District of Louisiana

Before SIBLEY, HUTCHESON, and HOLMES, Circuit Judges

Opinion of the court

Filed April 6, 1938

HUTCHESON, Circuit Judge: Appellant, an alien, was held for deportation, upon a warrant finding him subject to deportation; under the Act of October 16, 1918, as amended by the Act of June 5, 1920, in that he believes in and teaches, is a member of an organization that believes in, advises, advocates, and teaches, is a member of an organization that writes, publishes, and circulates written or printed matter advising and teaching, the overthrow by force and violence of the government of the United States, and that after entry, 112 he became a member of such an organization, society, or group. He applied for and obtained a writ of habeas corpus upon Eugene Kessler, District Director, who had him in custody. Afterwards, upon a hearing, there was an order discharging the writ, and remanding appellant for deportation. This appeal tests whether that order was rightly entered.

Appellant contends both that the hearings upon which the deportation order was based were so unfair as to constitute a denial of justice, and that the findings are without support in the evidence.

We find nothing essentially unfair about the hearings; as deportation hearings go, they were conducted with ordinary fairness. We agree with appellant, however, that the purported finding that he believes in and teaches, and belongs to or did belong to, an organization which believes in and teaches the overthrow by force and violence of the Government of the United States, is without any support in the evidence, is a mere fiat. The proceedings as a whole, and the questioning and summary in particular, are dramatic illustrations of the tyranny of labels over certain types of mind. The evidence, and the only evidence relied on for the finding and order is that during the Presidential campaign of 1932, when one Foster was running as the white, and one Ford as the colored candidate of the Communist Party of America, for President of the United States, appellant, in

November 1932, became a member of the Communist Party and accepted certain literature of the Communist Party for distribution. He testified that he was a member of the Communist Party of America until February 1933, when he quit paying his dues, and that since that time he has not been a member. He did not testify, nor did any one else, that he believed in the overthrow by force and violence of the

Government of the United States, neither did he, nor any one else, testify that the organization he had belonged to, the Communist Party of America, taught, advocated, or incited such overthrow. None of the literature which he was supposed to have circulated in 1932 was introduced, but his book of membership in the Communist Party in the United States was. Not a word in this membership book advocated, incited, or even suggested that the Government of the United States should be overthrown by force or violence. It did teach that the party is the vanguard of the working class; that it incorporates the whole body of experience of the proletarian struggle basing itself upon the revolutionary theory of Marxism, and representing the general and lasting interests of the whole of the working class. The record contained also, offered by the Bureau, extracts from a copy of the "Communist", dated April 1934, "8th Convention issue, a magazine of the theory and practices of Marxism and Leninism, published monthly by the Communist Party in the United States of America." Not a single extract from this magazine referred to the Government of the United States of America directly or indirectly. There is a discussion in it of Austro-Marxism. There is, too, the cynical suggestion that the proletariat should learn the sly ways of the bourgeoisie to become masters of politics and of laws, so that "legality" instead of "killing the proletariat," would "kill the bourgeoisie," and the statement that the final overthrow of Capitalism could not be accomplished without a mobilization of the workers for the struggle against it. There is too, the general statement that the question of a violent revolution lies at the root of the whole of Marx's teachings, and that only philistines or downright opportunists can talk about revolution without violence.

The evidence for Strecker makes him out a small bourgeoisie, a merchant, with a little capital, some canniness, a fair amount of human kindness, some bad habits, and apparently no quarrel with the Government of the United States, but only with what he regards as the evils of Capitalism as such, and with grafters holding Government offices. He flatly denies, and no one disputed him, that he has ever taught or believed in the unlawful destruction of property, or the overthrow by force of the United States Government, and in answer to the question, "Just what do you believe in in the way of government," replied, "I believe it is best like we have it here. We have a good constitution for the people by the people. We have a lot of grafters, as you know, that should be gotten rid of." He testified that he was not an anarchist, that he was not opposed to the United States Government, and that he never knowingly joined an organization the purpose of which was to destroy the government. All of the

literature he received when he joined in November, as he recalled it, was political, such as "Vote Communist in the November election"; that he never believed in nor taught sabotage, or the killing or assaulting of officers because they were officers. All that was proven against Strecker was that in 1932 he joined the Communist Party, and that he answered a foolish question—"Supposing that the majority of the populace of the United States were Communists, and were certain of a victory over Capitalism in an armed conflict, would you then personally bear arms against the present Government?" foolishly, according to its folly—"Certainly; I would be a fool to get myself killed fighting for Capitalism." This proof does not support the finding on which the warrant was based.

The statute under which these proceedings were instituted was enacted in 1918 and amended in 1920, to meet a situation caused by the crisis in Russia in 1918 and 1919, and the propaganda following that crisis for the overthrow of governments by force. It was 115. enacted to enable the United States to expel from its shores aliens seeking a footing here, to propagandize and proselytize for direct and violent action. The decisions of the Circuit Courts of Appeal in *Skeffington vs. Katzev*, 277 Fed. 129; *Antolish vs. Paul*, 283 Fed. 957; *Ungar vs. Seaman*, 4 Fed. (2d) 8, on the authority of which it was held in *Ex Parte Villarino*, 50 Fed. (2d) 582; *Kjar vs. Doak*, 61 Fed. (2d) 566, upon which the appellee relies here, that membership in the Communist Party of America alone is sufficient to warrant deportation, were rendered upon the Russian experience, and the record of the party at that time. They were all fact cases. They did not, they could not, decide that membership in the Communist Party of America, standing alone, is now sufficient to warrant deportation. The statute makes no such provision. Courts may not write it into the statute.

Much water, socially and politically, has gone under the bridge since 1920. Russia itself is more vigorously organized than almost any other country in the world; to prohibit and suppress those who teach and preach the overthrow of government by force. In this country, in the Presidential elections of 1932 and of 1936, the Communist Party, seeking by political means, rather than by violence, to remake the United States according to its heart's desire, into a government of the proletariat, by the proletariat, and for the proletariat, had a candidate for President. Nothing in our Constitution or our laws forbids the formation of such a party, or persons from joining them. The statute invoked here does not forbid membership in the Communist, or in any other party, except one which teaches the overthrow by force and violence, of the government of the United States.

It seems to me to be a kind of Pecksniffian righteousness, savoring strongly of hypocrisy and party bigotry, to assume, and find that merely because Strecker joined the Communist Party of 116 America, he is an advocate of or belongs to a party which advocates the overthrow by force and violence of the Govern-

ment of the United States. It seems to me, too, that the cause of Liberalism is more retarded than advanced by forays for deportation on evidence like this. But whatever may be thought to be the propriety, from the standpoint of tolerance and liberalism, of this proceeding, it may not be doubted that from the standpoint of its legality, a deportation order requires more than a mere fiat. There must be evidence in the record supporting the finding, on which the order rests. Such evidence is wanting here.

The order is reversed, and the cause is remanded for further proceedings not inconsistent herewith.

Reversed and remanded.

HOLMES, Circuit Judge, concurs in the result.

117

In United States Circuit Court of Appeals

No. 8680

JOSEPH GEORGE STRECKER

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND
NATURALIZATION

Judgment

April 6, 1938

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this court.

HOLMES, Circuit Judge, concurs in the result.

118

In United States Circuit Court of Appeals for the Fifth
Circuit

[Title omitted.]

Petition for rehearing

Filed April 26, 1938

*To the Honorable, the Judges of the United States Circuit Court for
the Fifth Circuit:*

The petition of the United States of America, respondent and appellee, appearing herein through Rene A. Viosca, United States Attor-

ney, and Leon D. Hubert, Jr., Assistant United States Attorney, with respect represents that:

I

The opinion and decree rendered in this cause on the 6th day of April 1938, is erroneous and contrary to the law and the evidence, and prejudicial to the interests of your petitioner, and a rehearing should be granted in this matter for the following reasons to-wit:

119

II

The Court is in error in holding that there was insufficient evidence produced at the hearings accorded the relator to justify the conclusion on the part of the Secretary of Labor that the subject believes in the overthrow by force and violence of the Government of the United States, in that the Court in its opinion said that the only evidence bearing upon this point was the following question and answer:

"Q. Supposing the majority of the populace of the United States were Communists and were certain of a victory over capitalism in an armed conflict, would you then personally bear arms against the present Government?"

A. Certainly; I would be a fool to get myself killed fighting for capitalism."

whereas, the following colloquy between the defendant and examining agent which the Court held was properly admitted in evidence, appears from the record (Tr. pages 49, 50, and 51):

"Q. Are you in accord with Marx in regard to the social order of things?"

A. Yes.

Q. Will you tell me what the aims and purposes of the Communist Party of America are?

A. Yes; it proposes to destroy capitalism and establish a Government by the people.

Q. Do you mean a Government similar to that now in existence in Russia?

A. Exactly.

Q. What means will the Communist Party of America use to attain its purpose?

120 A. I do not know what will be necessary.

Q. Will it resort to armed force in the event that should be necessary?

A. That is what they say.

Q. Who says that?

A. The leaders of Communism.

Q. Do you mean the local leaders, the national leaders, or those in Russia?

A. All of them.

Q. Do you think that the present form of Government in the United States should be destroyed and a Communistic or Russian form of Government established in the United States?

A. I think that the destruction of capitalism is inevitable and that the sooner it comes the better off we shall all be.

Q. Would you personally bear arms against the present U. S. Government?

A. Not at this time.

Q. Why not at this time?

A. Because Communism is not strong enough now."

It is respectfully submitted that this colloquy shows clearly that the relator believed in the use of force for the overthrow of the Government and the establishment of a Communist form of Government, but that he did not believe that the time was ripe at the present.

III

The Court is in error in holding that the cases of Skeffington v. Katzeff, 277 F. 129; Antolish v. Paul, 283 F. 957; Ungar v. Seaman, 4 F. (2d) 80, Ex Parte Vilarino, 50 F. (2d) 582; Kjar v. Doak, 61 F. (2d) 566, do not represent the jurisprudence today as to whether membership in the Communist Party is sufficient to warrant 121 deportation. In the following recent cases it was held that membership in the Communist Party of America is sufficient to warrant deportation: United States v. Perkins, 79 F. (2d) 533 (2 C. C. A., 1935), In re: Sarderquist, 11 Fed. Supp. 525 (D. C. Maine, 1935), affirmed by the 1st Circuit without opinion, 83 F. (2d) 890 (1936); Branch v. Cahill, 88 F. (2d) 545 (9 C. C. A., 1937). It is submitted therefore that the Court is squarely in conflict with other circuits in its holding that membership in the Communist party today is insufficient to warrant deportation.

Wherefore, the premises considered, petitioner prays that after due consideration a rehearing be granted in this case in order that the above matters may be more fully discussed, and finally, that the judgment of the District Court be affirmed.

And for all general and equitable relief.

RENE A. VIOSCA,

United States Attorney.

LEON D. HUBERT, Jr.,

Asst. United States Attorney.

[Duly sworn to by Leon D. Hubert, Jr.; jurat omitted in printing.]

122 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]

Before SIBLEY, HUTCHESON, and HOLMES, Circuit Judges

Opinion on motion for rehearing and dissenting opinion by Sibley, Circuit Judge

Filed June 7, 1938

PER CURIAM: The judgment of reversal is amended to read, "Reversed, with directions to try the issues de novo as suggested in Ex Parte Fierstein, 41 Fed. (2d) p. 54."

123 The motion for rehearing is denied.

SIBLEY, Circuit Judge; dissents.

SIBLEY, Circuit Judge, dissenting:

I think a rehearing should be granted, especially to consider the significance of the references to the Third Communist International contained in the membership book issued to Strecker by the Communist Party of the U. S. A. and the question whether the objectives and programs of the two named organizations can be judicially noticed. Neither of these things was argued before us nor considered in deciding the case, and they might lead to a different result.

The membership book for which Strecker paid, which was issued in his name, was received and read by him, and on which he paid dues for two months and which he retained in his possession after ceasing to pay dues without any resignation or repudiation of his membership, contains these statements: "A member of the Party can be every person * * * who accepts the program and statutes of The Communist International and the Communist Party of the U. S. A. * * * who subordinates himself to all decisions of the Comintern and of the Party * * *" "The Communist Party, like all Sections of the Comintern, is built upon the principles of democratic centralization. These principles are * * * immediate and exact applications of the decisions of the Executive Committee of the

124 Communist International and of the Central Committee of the Party * * *. After a decision has been adopted at the Congress of the Comintern * * * it must be carried out unconditionally, even if some of the members of the local organization are not in agreement with the decision." "The Party * * * incorporates the whole body of experience of the proletarian struggle, basing itself upon the revolutionary theory of Marxism * * *. The Party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action." It thus appears that the Communist Party of U. S. A. and its members are affiliated with, nay more, are subject to the Communist International of Moscow and adopt its

program and statutes. There is express reference to the "revolutionary theory of Marxism."

Now a court, and equally the Secretary of Labor, may notice without proof what is generally notorious in the community. This does not mean that everyone actually knows it, but that ordinarily well informed persons do. Among such things so noticed are general and local current history. And this includes the organization and objectives of political parties. 23 C. J., Evidence, § 1937; State vs. Wright, 251 Mo. 325, 158 S. W. 823; State vs. Kortjohn, 246 Mo. 34, 150 S. W. 1060; Rider vs. County Court, 74 W. Va. 712; Porter vs. Flick, 60 Neb. 773. It is known to me, not from research, but from general information at the time and since, that the Third Communist International was organized just after the World War and in connection with the Russian Revolution as an international organization of those who believe that private property should be abolished and the essentials of wealth and production vested in a government controlled only by the proletariat, and that the accomplishment of this by peaceful means is impractical and that the "direct action" of revolution must be resorted to; and to this end all capitalistic governments must be thus
125 overthrown, and the workers of the world must unite. In the same way I know that the Socialist Party in the United States, which seeks change by constitutional means, was about this time divided, and the "left wing," which insisted on "direct action," separated from it and became the Communist Party of the U. S. A. and joined the Third Communist International. If this was all knowable by the Secretary, in connection with the evidence in the record, there would be a sufficient basis for him to conclude as a fact that Strecker became a member of or at least affiliated with an organization that advises, advocates and teaches the overthrow by violence of the Government of the United States, as one of the capitalistic governments, within the provision of § U. S. C. A. § 137 (c). The opinion of this Court in fact resorts to judicial notice in its remarks about recent changes in the methods of the Communist Party and in Soviet Russia. But no one professes to know that the Communist International had in 1933 changed its program, or indeed that the Communist Party of the U. S. A. at that time had. No one doubts that the economic aims of Communism may be lawfully promoted by a citizen or an alien in the United States, so long as they are sought to be attained by peaceable means. But the advocacy of attainment by force and violence is outlawed, because laying the foundation for treason. A rehearing ought to be had.

126

In United States Circuit Court of Appeals

No. 8680

JOSEPH GEORGE STRECKER

vs.

EUGENE KESSLER, DISTRICT DIRECTOR OF IMMIGRATION AND
NATURALIZATION*Amended judgment*

June 7, 1938

The judgment of reversal is amended to read, "Reversed, with directions to try the issues de novo as suggested in Ex Parte Fierstein, 41 Fed. (2d) p. 54."

SIBLEY, Circuit Judge, dissents.

127

In United States Circuit Court of Appeals

[Title omitted.]

Order denying rehearing

June 7, 1938

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

SIBLEY, Circuit Judge, dissents.

128 In United States Circuit Court of Appeals for the Fifth
Circuit

[Title omitted.]

Petition³ for stay of mandate

Filed June 16, 1938

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Now into Court comes the United States of America, through Rene A. Viosca, United States Attorney for the Eastern District of Louisiana; and Leon D. Hubert, Jr., Assistant United States Attorney for the Eastern District of Louisiana, and with respect shows that:

129

I

Your petitioner desires a stay of the mandate to be rendered in the above named and entitled matter for a period of thirty (30) days

pending which your petitioner desires to apply to the United States Supreme Court for a writ of certiorari;

Wherefore, the premises considered, petitioner prays that order be issued staying the issuance of the mandate in the above named matter for a period of thirty (30) days from the instant date.

(Signed) LEON D. HUBERT, Jr.,
Assistant United States Attorney.

New Orleans, Louisiana, June 16, 1938.

[Duly sworn to by Leon D. Hubert, Jr., jurat omitted in printing.]

130 In United States Circuit Court of Appeals for the Fifth.
District

[Title omitted.]

Order staying issuance of mandate

On consideration of the application of the United States in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable it to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 16th day of June 1938.

(Signed) RUFUS E. FOSTER,
United States Circuit Judge.

131 In United States Circuit Court of Appeals for the Fifth
Circuit

[Title omitted.]

Petition to set aside judgment rendered June 7, 1938, and for a rehearing

(Filed June 27, 1938)

To the Honorable, the Judges of the United States Circuit Court for the Fifth Circuit:

The petition of the United States of America, respondent and appellee, appearing herein through René A. Viosca, United States

Attorney, and Leon D. Hulbert, Jr., Assistant United States Attorney, with respect represents that:

I

The per curiam opinion of the Court rendered on June 7, 1938, which reads as follows:

"The judgment of reversal is amended to read, 'Reversed, with directions to try the issues de novo as suggested in Ex parte Fierstein, 41 Fed. (2d) 'p. 54.'"

132 is erroneous and should be recalled and set aside for the following reason to-wit:

II

It is well settled that in a habeas corpus proceeding concerning a deportation matter, the trial court is not a fact finding tribunal, but simply inquires into and passes upon the questions of whether there has been a fair hearing and whether the conclusions are supported by evidence. Tisi v. Tod, 264 U. S. 131; Vajtauer v. Commissioner, 273 U. S. 103; Bilokumsky v. Tod, 263 U. S. 149; Ng Fung Ho v. White, 259 U. S. 276. In the case of Lindsey v. Dobra, 62 F. (2d) 116, Certiorari denied 288 U. S. 696, this Court said:

"The taking in the District Court of additional evidence on the merits was excepted to. Though the evidence adduced does not appear to be of controlling importance, we must hold its reception to be improper. Aside from questions of citizenship or coercion or fraud in the hearing, a retrial of fact issues on new evidence is not in order. Exedahtelos v. Fluckey (6 C. C. A.) 54 F. (2d) 858."

Accordingly, it is submitted that the trial court cannot take further evidence in the matter, and that therefore a trial de novo would be a vain and useless proceeding since the Court would be obliged to pass upon the same record which was before it at the original hearing.

Wherefore, the premises considered, petitioner prays that after due consideration the per curiam opinion hereinabove referred to be recalled and set aside, and that a rehearing be granted in order
133 that these matters as well as the matters set forth in the first petition for a rehearing filed on behalf of the respondent herein be more fully discussed to the end that the judgment of the District Court be affirmed.

And for all general and equitable relief.

RENE A. VIOSCA,

United States Attorney.

LEON D. HUBERT, Jr.,

Asst. United States Attorney.

[Duly sworn to by Leon D. Hubert, Jr.; jurat omitted in printing.]

In United States Circuit Court of Appeals
For the Fifth Circuit

[Title omitted.]

Petition for additional stay of mandate

Filed July 13, 1938.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Now, into Court comes the United States of America, through Rene A. Viosca, United States Attorney for the Eastern District of Louisiana, and Robert W. Weinstein, Assistant United States Attorney for the Eastern District of Louisiana, and with respect shows that:

I

Your petitioner desires a stay of the mandate to be rendered in the above named and entitled matter for an additional period of thirty (30) days pending which your petitioner desires to apply to the United States Supreme Court for a writ of certiorari;

Wherefore, the premises considered, petitioner prays that order be issued staying the issuance of the mandate in the above named matter for an additional period of thirty (30) days from July 16, 1938.

(Signed) ROBERT W. WEINSTEIN,

Assistant United States Attorney.

New Orleans, Louisiana, July 8, 1938.

[*Duly sworn to by Robt. W. Weinstein; jurat omitted in printing.*]

In United States Circuit Court of Appeals
For the Fifth District

[Title omitted.]

Order staying issuance of mandate

On consideration of the application of the Appellee in the above numbered and entitled cause for an additional stay of the mandate of this court therein, to enable Appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for an additional period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from July 16, 1938, there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is fur-

ther ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from July 16, 1938, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 13 day of July, 1938.

(Signed) RUFUS E. FOSTER,
United States Circuit Judge.

137. In United States Circuit Court of Appeals

[Title omitted.]

Order denying petitions to set aside judgment

July 27, 1938

The petition to set aside the judgment of this Court is DENIED.

138 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]

Petition for stay of mandate

Filed Aug. 16, 1938

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Now into Court comes the United States of America, through Rene A. Viosca, United States Attorney for the Eastern District of Louisiana, and Leon D. Hubert, Jr., Assistant United States Attorney for the Eastern District of Louisiana, and with respect shows that:

139 I.

Your petitioner desires a stay of the mandate to be rendered in the above named and entitled matter for an additional period of twenty-three (23) days pending which your petitioner desires to apply to the United States Supreme Court for a writ of certiorari;

Wherefore, the premises considered, petitioner prays that order be issued staying the issuance of the mandate in the above named matter for an additional period of twenty-three (23) days from August 16, 1938.

(Signed) LEON D. HUBERT, JR.,
Assistant United States Attorney.

New Orleans, Louisiana, August 16, 1938.

[Duly sworn to by Leon D. Hubert, Jr., jurat omitted in printing.]

140 In United States Circuit Court of Appeals for the Fifth District

[Title omitted.]

Order staying issuance of mandate

On consideration of the application of the United States in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable it to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of twenty-three days, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within twenty-three days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of twenty-three days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 16 day of August, 1938.

(Signed) RUFUS E. FOSTER,

United States Circuit Judge.

141 [Clerk's certificate to foregoing transcript omitted in printing.]

142 Supreme Court of the United States

Order allowing certiorari

Filed October 17, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 42,815. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 330. Eugene Kessler, District Director of Immigration and Naturalization, Petitioner, vs. Joseph George Strecker. Petition for a writ of certiorari and exhibit thereto. Filed September 7, 1938. Term No. 330 O. T. 1938.

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